SUPREME COURT OF THE UNITED STATES.

No. 446.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN RAILROAD COMPANY, AND ALEXANDER HAY, APPELLANTS,

vs.

THE MAYOR, BOARD OF ALDERMEN AND BOARD OF COMMON COUNCIL OF THE CITY OF WASHINGTON, AND JOSEPH H. BRADLEY ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Certificate of clerk.*

CLERK'S OFFICE OF THE DISTRICT OF COLUMBIA.

I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, do certify that originals of which the following writings, contained in 306 pages, are true and complete copies, are on file, and of record in the clerk's office of said court; and that said originals, together, constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled The Washington, Alexandria and Georgetown Railroad Company against The Mayor and Corporation of Washington, and Joseph H. Bradley and A. Thomas Bradley, trustees, and by amended bill, George W. Riggs and A. T. Keickhover as Riggs & Co., James C. McGuire & P. D. Langham, of D. C., and Samuel P. Kilbreath, of N. Y.

In testimony whereof I hereto subscribe my name and affix the seal of said court.

March 29, 1869.

R. J. MEIGS,
Clerk Sup. Ct. D. C.

2 WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Company, *et al.*
vs.
MAYOR, BOARD OF ALDERMAN, BOARD OF COMMON Council of Washington *et al.*

3 *Original bill.*

WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Company, *et al.*
vs.
MAYOR, BOARD OF ALDERMEN, BOARD OF Common Council of Washington city, *et al.*

To the Honorable Judges of the Supreme Court of the United States for the District of Columbia:

The Washington, Alexandria and Georgetown Railroad Company of the District of Columbia, by Alexander Hay, their president, and Alexander Hay, of the city of Philadelphia, State of Pennsylvania, for himself and others, who may hereafter join in this suit, complainants bring this their bill against the mayor and board of alderman and common council ofthe city of Washington, and Joseph H. Bradley and A. Thomas Bradley, citizens of the United States and residents of the District of Columbia, defendants.

And thereupon the complainants allege and say:

1. That they are a body corporate, duly authorized, organized and existing under and by virtue of certain acts of the legislature of the State of Virginia, the corporation of Washington, and the Congress of the United States, as will be hereinafter named, to wit:

By an act of the legislature of Virginia, approved February 27, 1854, entitled "An act to incorporate, &c., a railroad between Alexandria and Washington city," Jas. S. French, John W. Maury, A. J. Marshall, and other parties therein named, were created and constituted commissioners for the purpose of receiving subscriptions to an amount not exceeding three hundred thousand dollars, in shares of one hundred dollars each. And in section No. 2 of said charter or act of incorporation it was, among other things, provided, that—

"Whenever two thousand shares shall have been sub-
4 scribed, the subscribers, their executors and assigns, shall be, and are hereby, declared a body corporate under the name and style of the Alexandria and Washington Railroad Company, and shall be subject to all the provisions of the code of Virginia applicable thereto."

2. As will more fully appear by the said act of incorporation, made part hereof and exhibited in a printed pamphlet marked A, p. 1.

That under and by virtue of said act of incorporation, the said company was duly organized as required by law.

3. That by an act of the board of aldermen and common council of the city of Washington, approved July the 27th 1855, entitled "An act to extend the charter of the Alexandria and Washington Railroad Company, &c." the said company were authorized to construct their said road from the north bank of the Potomac river, at the foot of Maryland avenue, as therein provided, to the Baltimore and Ohio railroad depot; which said ordinance is made part hereof in said exhibit A, p. 4.

4. That by the laws of Virginia, expressly made part of said company's charter, it is provided as follows:

"*Power to borrow money.*

"No company which, by its charter, has no express power so to do, shall borrow money until there shall be paid up and expended or appropriated the whole amount of capital stock subscribed, with the exception only of losses by delinquent or insolvent stockholders; but the president and directors may borrow an amount not exceeding that part of the capital stock which is unsubscribed, and may issue certificates for the money so borrowed, and may make said certificates convertible, within a reasonable time, into the stock of said company, at the pleasure of the holder."

Which said part or section of the said code of Virginia so forming part of said charter, is made part thereof in said exhibit A, p. 8.

5. That James S. French subscribed for one thousand shares of said stock, and Walter Lenox subscribed for five hundred shares, and that George French, the brother of said James, subscribed for five hundred shares, making in all two thousand shares of the stock which was subscribed and controlled by these parties, but who

never paid up any part of said subscription, excepting two dollars per share at the time of, and to make good, their said subscription.

6. That the said James S. French, as president of said road, acting by authority of said company, proceeded to make large contracts for material and work to be performed in the construction of said road, as will be hereafter named, for which he gave the written or verbal stipulations and promises of said road to pay, which would not have been necessary had the full subscription of the said two thousand shares of stock been paid up as required by law.

7. That the said James S. French, as president of the said railroad company, with a view to raise money ostensibly for the use of said road, but which never was so applied, conceived the idea of issuing the certificates of indebtedness of said road, notwithstanding the law prohibiting the same as aforesaid. And in order to render the same saleable in the market, applied to the corporation of Washington to endorse the same, which by its charter had no right, power, or authority to make such endorsement, as will be hereinafter stated and shown, but that nevertheless such contract was entered into between the said James S. French, as president of the said railroad company, and the said corporation of Washington, as follows, that is to say—

On the 2d day of January, 1855, the proposition was submitted to the corporation of Washington, in the board of common council, for the endorsement of the said $60,000 of certificates of indebtedness proposed to be issued by said James S. French as president of said road. And on the 22d day of January, 1855, an ordinance was passed by the board of common council; and on the 29th day of the same month it was further passed into a law and approved by the then mayor of Washington the Hon. John T. Towers, on the 8th day of February, 1855, which said ordinance, among other things, provided that said certificates should be issued in sums of not less than five hundred dollars each, should mature in six annual instalments of six thousand dollars each, to commence on the first day of January, 1858, and guarantied the punctual payment thereof; and that the same should be paid and satisfied out of the ordinary revenue of the city after ten days from the maturing of said certificates; and that the proceeds thereof should be applied exclusively to the making of said road; all of which will more fully appear by reference to said ordinance made part hereof, marked exhibit B.

8. That pursuant to this said ordinance the said James S. French, of his own motion and pretending to act in the name of said railroad company, proceeded to issue and execute various and sundry papers called certificates, and to sign the same as president, without the approval of the board of directors of said company, as to the form and substance of said certificates, and as to his authority to do so, and without the approval of the directors of said road, after the same were so drawn, either before or after the signing of the same, which was an act that could only have been done

by the full concurrence of the board of directors, even provided all the other prerequisites had been complied with as required by the laws of Virginia, directing how and when money could be borrowed by an incorporated company as aforesaid, and which was done without the corporate seal of the said company being attached thereto, as will more fully appear by reference to one of said certificates, numbered ten, dated the 18th day of April, 1855, made part hereof, marked exhibit C.

9. That on the same 18th day of April, 1855, the then mayor of Washington, John T. Towers, and the register of the same, Wm. McCormick, did assume to endorse the said certificates so issued and signed by the said James S. French, as aforesaid, and by such endorsement to bind the said corporation of Washington to guaranty the payment of said certificates, both principal and interest, as will more fully appear by said endorsement on said bond No. 10, made part hereof, marked exhibit D.

10. That the said Jas. S. French, further acting without the approval or authority of the board of directors of said railroad company, or their expressed authority so to do, did of his own motion proceed to execute a certain instrument of writing, called a deed of trust, to the defendants, Joseph H. Bradley and A. Thomas Bradley, for the alleged purpose of securing or indemnifying the said corporation of Washington for its endorsement of said certificates, which is referred to and made part thereof, the said ordinance aforesaid, as passed by the said corporation of Washington, "and for the purpose of aiding in the completion of said road," as by the terms and conditions of said act will more fully appear, which said deed of trust purported to convey to the said trustees the whole works and property of said railroad company acquired, and to be acquired, &c., which said pretended deed of trust or instrument of writing never was seen, authorized, or approved by the direction of said board of directors before or after the same was signed by the said James S. French, as will more fully appear by reference to said deed or writing made part hereof, marked exhibit E.

7 11. That at the time this said deed of trust was so signed by Jas. S. French the said railroad company had already contracted debts and were then indebted to various and sundry parties in a sum much larger than the said $60,000 of certificates so agreed to be endorsed by the corporation of Washington, and that said endorsement was only authorized upon the express condition that said amount would insure the completion of the road, and the mayor of Washington and a member from each of the boards of aldermen and common council were appointed a committee to see to the issuing of said certificates and the application of the proceeds of the same on the part of said railroad company, which duty was wholly neglected by said committee, as there were debts then created and being created for iron, locomotives, cars, and other material and labor, for which the obligations and faith of said road was pledged to such an extent as to show by the slightest investigation by the said committee so appointed, that said sum of sixty thousand dollars was wholly

insufficient for the completion of said road; but no steps whatever were taken on the part of the corporation of Washington to see that a proper state of case existed for the endorsement of said certificates, or to the proper application of the proceeds of the same.

12. That the said certificates, when so endorsed by the said mayor and register of Washington, were not delivered to the said railroad company and by it negotiated for money for its use, as contemplated by the said ordinance authorizing said endorsement as aforesaid, and according to the objects specified in said deed of trust. On the contrary, $5,000 of the same were delivered to Jas. C. McGuire in payment of a pre-existing debt, and $8,000 or $10,000 were given to Walter Lenox in satisfaction for his services in getting the ordinance for the endorsement of the same passed by the city councils, and were by said Lenox passed away, and are now held by one Wainright or Wainright & Co., of New York, and the remaining amount, say $47,000, was, by the mayor of Washington, hypothecated with Riggs & Co., who loaned money on the same—not to the said railroad company, but to the said mayor of Washington, who checked for the same in the name of the corporation; and it does not appear that any, or if any, what part of the proceeds of said certificates ever was applied to the said railroad company. The whole proceeds were taken charge of by the said mayor, and received by him in the name of said corporation, to whom alone the money was loaned,
8 and not to said railroad company, with whom said Riggs & Co. had no dealings whatever.

13. That said deed of trust, when so signed by James S. French, was not delivered to the said corporation and entered upon record in the county of Alexandria, State of Virginia, so as to be notice to those who were still giving credit to said road in the advance or loan of money, and supplying material and labor, but was left in the hands of the said James S. French, who kept the same concealed in his private possession for about two years, and only put the same on record in Alexandria county when some of the just creditors of said road were about taking steps to collect their overdue and unpaid notes and demands by process of law.

14. That previous to the recording of said deed, the said railroad company borrowed money for its use from Fowle, Snowden & Co., of Alexandria, to the amount of $14,850, for which they executed a deed of trust, and which was recorded in the county of Alexandria before the said deed of trust to the corporation of Washington was recorded, and had contracted a large amount of debts for iron, engines, cars, and other materials for said road, and were also indebted to many laborers and mechanics of every description for work and labor performed on and for the use of said road, and had also received various large sums of money from the complainant, Alexander Hay, and others, which were to be liquidated in the full paid stock of said road.

15. That said railroad, being still unfinished and the said company out of means, and having in reality no legal authority whatever to borrow money could get no further credit, had, in the meantime, to

wit, on the 27th day of February, 1856, applied to the legislature of Virginia for authority to sell their bonds to the amount of one hundred thousand dollars, which was granted under "an act to authorize the Alexandria and Washington Railroad Company to issue coupon bonds," to which said act reference is made, as part hereof, in said exhibit A, page 4.

16. That in the exercise of this said authority the said railroad company did issue part of said bonds, and sold thirty thousand dollars of the same to Benjamin Thornton, of England, for whose use, and as security for the payment of which bonds the said railroad company executed a deed of trust to Walter Lenox as trustee, dated the 16th day of July, 1857, which said deed conveyed all the works, franchises, estate, property, and effects of said railroad com-
9 pany to said Lenox, to secure the principal and interest on said $30,000 coupon bonds; which said deed, among other things, provided that "in the event the said company shall fail to pay the interest on said bonds, so that there shall be at any time six months' interest wholly due and unpaid, or the principal on said bonds, &c., or in either case, the said trustee, or his successor, shall, at the request in writing of at least three-fifths of said bondholders, cause the said road to be sold for cash, after advertising for sixty days in certain papers therein specified." And said deed further provided, "that in case the said trustee therein named becomes incapacitated, that a new trustee should be appointed by any court of record in Alexandria county, Virginia." This deed of trust to the said Lenox was properly authorized by the board of directors of said company, and was by the same fully approved, after being drafted and submitted to their examination; and their president, the said James S. French, was duly authorized and directed to execute the same and affix the corporate seal of said company thereto; all of which will more fully appear by reference to said deed, made part hereof, marked exhibit F.

17. That the money procured on these bonds, together with money advanced by said Hay and others, completed and equipped said road, and put it in running order from the south bank of the Potomac river to the city of Alexandria by the first day of January, 1858, when the same went into operation over that part of it. There being at that time no charter granted by Congress to cross the Potomac river, there could be no use made of the franchises granted by the corporation of Washington through the city as aforesaid.

18. That said railroad company now, to wit, about the first day of January, 1858, commenced the use of said road, and were in receipt of its earnings from that time on, as will be hereinafter named, but made no payment of the debt of $6,000, which matured and became due on the first day of the last named month and year; nor did the said company at any time subsequently pay any instalment of principal, and finally refused to pay any part of the interest due of the said so-called certificates, but in fact repudiated and disregarded the same absolutely; and never at any time afterwards paid or recognized the same as being a legal debt or obligation binding said company.

19. That said Alexandria and Washington Railroad Company never paid or pretended to pay any of its various debts, notes, acceptances or obligations, or the money advanced by said Hay and others; nor did the said company pay, or make any effort to pay the interest, as the same accrued, due on the said thirty thousand dollars of coupon bonds sold to said Thornton, and secured as aforesaid; nor would issue the stock of the said company to its creditors, so as to enable them to change the administration of said road by the election of a new directory, but continued in open disregard and default of all its obligations, while the earnings of the road were absorbed without accounting to any one, while it kept all its creditors and proper owners at bay and defiance under the shelter of the said deed of trust so executed to the said corporation of Washington, which, though well advised of all these defaults and neglects on the part of said company, and was from time to time appropriating money, levied by taxes on the citizens, it took no steps whatever to restrain this notorious abuse of its franchises and obligations, the said corporation never at any time gave directions to its trustees, the said Bradleys, to enter and take possession of the said road and dispose of the same, so as to give its bona fide creditors an opportunity to come in and protect their rights and secure their debts.

20. That about the year 1859 the said Fowle, Snowden & Co. attempted to enforce their deed of trust, when the said corporation set up the said deed of trust, claiming priority, and a litigation ensued, in which the corporation of Washington deed was, by proof furnished by James S. French, decided to be prior in point of right, and there the matter ended.

21. That all this time the said Hay and others entitled to a portion of the stock and interest in said road were refused all rights whatever; while the various parties who had furnished material, capital and labor for said road were pursuing their respective actions at law, with the desire of getting judgments and selling the said road under executions, whereby they meant to contest the validity of said deed of trust so executed to the said corporation, as also the deed executed to Fowle, Snowden & Co. The deed of trust so executed to said Lenox for the use of said Thornton was not questioned. Judgments were thus obtained to the amount of some $65,000, and a decree was obtained by Fowle, Snowden & Co. to the amount of some $17,000, principal and interest, independent of their said deed of trust; and some assets of the road were being sold which forced the said Hay and others, who held interest in the stock of the road when issued, which was thus jeopardized, to come forward and pay off the said judgments, which they did and took assignments of the same.

22. That the said Hay and others having paid off all the judgments as rendered against said company were about proceeding to have the said road sold under some one of the nine executions issued for that purpose, when the present rebellion in the State of Virginia so interrupted judicial proceedings that such could not be done; and in the meantime the said French and his co-directors, having absorbed

all that could be got from said road, and, joining in said rebellion, took away all the engines and rolling stock and material of said road that could be removed, and sold the same for a large sum to the so-called confederate States government, leaving the road stripped of everything that was available, the further use of which was necessarily suspended.

23. That the coupons due on the said thirty thousand dollars of bonds, being unpaid for more than six months, to wit, from the first of December, 1857, to the first of January, 1861, and all the officers and directors of said company having turned traitors and gone south to aid in the rebellion, left the northern and foreign creditors of the road, who were the real owners, to collect their money as best they could.

24. The said Benj. Thornton, who held more than three-fifths, to wit, the whole of said $30,000 of bonds, the coupons of which had been regularly on the 22d day of January and July of each year presented at the Bank of Commerce, the place of payment specified in said deed, but no instalment of which had been paid, was, through agent and attorney, compelled to call on said Lenox to execute the said trust in that behalf, provided as aforesaid; and finding that the said Lenox had gone south to join in the said rebellion, and was thereby incapacitated to execute said trust, was compelled to petition the honorable County Court of Alexandria, it being a court of record, to substitute and appoint a new trustee in the place of said Lenox, who had so abandoned his said trust. Whereupon the said court appointed Joseph B. Stewart, attorney at law, of Washington city, trustee in the place of said Lenox; all of which will more fully appear by reference to said exhibit A, page 13.

25. That before this occurred, to wit, as early as January, 1859, the said Alexander Hay and others having an interest in the stock of said road, and feeling desirous for its successful operation, and seeing the mismanagement attending the same, as well as the accumulating neglect and indifference displayed on the part of the
12 corporation of Washington in looking after and disposing of the incumbrance thrown over the value of the franchises by reason of their said endorsement of the said certificates so issued by the said French, the said Hay did, in behalf of himself and others, call the attention of the corporate authorities to the neglect that was being produced on their part, and the injurious effect it was having on the rights of others who had capital invested in said road, and with a view of amicably arranging the same, proposed to put in the hands of the said corporation of Washington good and valid six per cent. paying State bonds to the amount of $48,000; which being done, the said city's deed of trust was to be assigned to said Hay and associates, who would undertake to save the corporation harmless from any further demands, it then only having paid two of the ten annual instalments, with interest, leaving just $48,000 to be paid, and would then have the said road put in good working order, which in fact never yet had been done, notwithstanding the large amount of money squandered by those having it in charge. That said prop-

Supreme Court of the United States,

ADJOURNED TERM OF OCTOBER, 1870.

THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY AND OTHERS, APPELLANTS,

vs.

THE CITY OF WASHINGTON, JOSEPH H. AND A. T. BRADLEY, TRUSTEES, &C., AND JAMES P. KILBRETH AND OTHERS, APPELLEES.

On Appeal from the Decree of the Supreme Court of the District of Columbia.

The appellants filed their bill in Chancery in the Supreme Court of the district, *on the first day of September*, 1863, asking for an injunction to restrain the sale of the Alexandria and Washington railroad under a deed given by the Company to Joseph H. and A. T. Bradley, in trust to secure the $60,000 of the bonds of the Company. Answers were filed, and testimony taken, but the case was delayed and continued from term to term, and from year to year. In September, 1868, the defendant, Kilbreth, filed a cross-petition asking for a dissolution of the injunction. The case was in due form transferred to the joint term of the Court; and in Febuary, 1869, the case came on for hearing, and was *regulary* heard and

decided. After which, a motion for a rehearing was argued at great length and patiently heard and overruled.

Points relied on to sustain the decree:

1. The Alexandria and Washingron Railroad Company was a legally constituted Corporation wlth a franchise to construct and operate a Railroad from Alexandria in Virginia, into the district of Columbia, to connect with the Baltimore and Ohio Railroad. See Act of incorporation of the Virginia Legislature of Febuary, 1854 (Statue, Vol. 10. p.

Ordinance of the City of Washington of Febuary, 1855. Record p, 20.

If any irregularities had taken place, they were fully waived by long acquiescence, and a long course of negotiations and business transactions. The validity and priority of the Bradley deed of trust, was expressly recognized in the Lenox deed of trust,which constituted *the basis on which the new company is claimed to have been founded.*

2. The Washington, Alexandria and Georgetown Company was not lawfully constituted, and its organization was wrongful and a fraud. This has been solemnly determined by the Court of Appeals in Virginia where the transaction took place. (See report of case.) *Aberdeen Railway Company vs. Blakie Bros.* 1st Macqueen's Rep. p. 461

3. The Bradley deed of trust covered not only *existing* but also *all subsequently acquired property*. This first company not only contracted, but operated the road on both sides of the river for a time. This is beyond controversy.

4. The Court having general equity jurisdiction in the matter of the execution of trusts, and having acquired jurisdiction over the subject matter, with the necessary parties before it, in this case the decree rendered was the only one which could do full equity, and provide for the protection and adjustment of all equitable interests.

5. The trustees by *the express terms of the deed of trust had the power of sale*. The order of the court was not necessary for *the authority* to sell. It was made simply to hold jurisdiction *over the execution of the trust*, and to adjust the conflicting equities in the distribution of the proceeds of the sale. The Alexandria and Washington Company, therefore, was not a *necessary* party.

T. W. BARTLEY,
Attorney for defendant.
J. P. KILBRETH.

osition, though at first entertained by the board of aldermen, met with an opposition from a hostile faction, who from apparent motives of dislike to Riggs & Co., as also in a spirit of opposition to certain other members of the board, succeeded in voting an amendment to the ordinance authorizing said transfer of the city deed of trust as aforesaid upon the deposit of said proposed $48,000, which rendered the said transfer impossible, and the ordinance an absurdity.

26. That said Hay and associates being met in this spirit of opposition, and seeing that nothing practicable or reasonable could be done with the said corporation, and that it was not disposed to do anything whatsoever to aid the said road in the incubus which was pressing over it as aforesaid, determined to abide the operation of law and contest the said city's deed of trust, when at any time a sale should be attempted under the same, which, for many reasons, they were advised was illegal, null and void.

27. That said road and its affairs remained in this state of utter neglect, so far as the corporation was concerned, during the next three years; the said French and his co-directors using said road as they pleased and paying nothing to any creditors, during which time said Hay and his associates matured and paid off its judgments as rendered, having the same accredited to him or them on the records of the court, when the rebellion broke up further civil proceedings, and the said French and his co-directors stripped the road of
13 all its rolling stock and moveable property, which was transferred into the hands of the rebellion as aforesaid.

28. That finding the said road in this robbed, abused and ruined condition, and liable to still greater damage by neglect, the said Hay and other parties having a vested interest in the road sought again the corporate authorities of Washington, desiring they should take some steps in conjunction to save the said road from total ruin, and were for that purpose disposed to waive the notorious illegality of the city's deed of trust, and to unite for the common benefit of all parties to save the road from ruin and its franchises from forfeiture, so soon as the military occupation of the south side of the Potomac would admit of access.

29. That in this effort to move the said corporation to some sort of practicable action, the said Hay and associates were referred to the committee on finance of the board of aldermen, composed of Messrs. Brown, Fisher, and Wendell, three upright, intelligent, and business men, who, after hearing the request that the corporation should, in order to maintain any just rights against said road, contribute something towards its re-equipment and repairs, which were absolutely necessary in order to bring it into use, declined making any such arrangement, or recommending any money to be paid or obligation assumed by the corporation in that behalf, for the reason, as stated by them, that the corporation had no right or authority by virtue of its charter to make any such debt or burden on the people of Washington, or to pledge the revenues of the city for its payment, even admitting it might prove an ultimate advantage. That the debt created by the corporation in its endorsement was one more of a moral

than a legal obligation, which it ought in good faith to liquidate, but they would seek to even partially mend the first error by a further and absolute violation of the city's charter, but requested that said Hay would, on the part of himself and associates, make some offer to the corporation in liquidation of its interest, to which they would give as favorable consideration as their sense of duty would admit of, whatever the same might be. This the said Hay agreed to do, but at the same time gave notice to the said committee that himself and associates, claiming to be the real beneficial owners of said road, would not allow its whole works to be destroyed and its franchise destroyed. That for this purpose they had already taken possession of said road, and should proceed to repair and work the same, and if the city, whose lien was null and void, did not take steps to aid in the
14 matter, he should not regard it as having any rights whatever.

30. That with this warning thus fairly given, the said Hay and his associates proceeded to make arrangements for said road, and were preparing for that work, when they were met with impediments emanating from the War Department on the score of working strangers within the military lines, which was finally accommodated by an agreement being made with the Secretary of War that the work should be done under the government supervision, and that said Hay and his associates would be charged with the cost of material and labor applied, and credited with what was just and proper for the use of said road while in the government service, and that the balance should be paid in cash on final settlement, be it either way, which was fully agreed to on the part of said Hay for himself and associates, when the work was duly commenced.

31. That pending these proceedings the said Hay had an interview with his honor the mayor of Washington, who solicited the said Hay to submit some terms of liquidation to the corporation, which he would recommend to the boards of aldermen and council, whereupon the said Hay, after consultation with the other parties having large interests in said road, did, on the 11th day of January, 1862, address a written communication to his honor the present mayor of Washington, proposing in substance to pay off and liquidate the outstanding half, say $30,000 in amount, of the city's endorsements, as will more fully appear by said proposition, made part hereof, marked exhibit G.

32. That said Hay, in making this proposal, was legally advised that the corporation's lien was invalid and void in law, for the want of proper authority to make such an endorsement, which was a violation of its charter, but did it with a view of securing the good will of the people and corporation of Washington city, and thereby terminate a source of long and protracted factious and personal opposition in the city council, which had now degenerated into mutual assaults and recriminations; believing, at the same time, that under a proper reorganization of the said railroad it could be made profitable, and would be able to pay the large debt thus proposed to be assumed, and would get rid of litigation and strife.

33. That on the 10th of March, 1862, the committee to whom was

referred the proposition of said Hay made report, recommend-
15 ing the acceptance of said proposition, and reported an ordinance to that effect, as will more fully appear by reference to said ordinance, made part hereof, marked exhibit H. Mr. Shepherd made a minority report opposing the same, thus renewing the personal and antagonistic opposition which had originated at an early stage of the proceeding. Several consecutive committies were appointed, until the question degenerated into a complete wrangle and dispute between the board of aldermen and common council.

34. That pending this controversy the said Hay and his associates had caused the said road to be thoroughly reconstructed from end to end, and relaid with new iron, and put in good running order, at about which time the said deed of trust, executed to said Lenox to secure the $30,000 of coupon bonds held by Benjamin Thornton, of England, as aforesaid, was brought forward, and who, after procuring the appointment of said Joseph B. Stewart by the County Court of Alexandria as trustee in the place of said Lenox, further requested the said trustee to execute said trust by the sale of said road, as in the said deed of trust is provided. That said Stewart, as trustee, thereupon advertised, according to the requirement of said deed of trust, the said road for sale on the 10th day of April, 1862, on which day it was sold, and purchased by Alexander Hay and his associates, who held and represented all the judgments, decrees and liens on said road, including the so-called secured deed of trust, executed to secure Fowle, Snowden & Co., as aforesaid which the said Hay and his associates had purchased, and which was assigned to them. The said sale was for cash, and the road, with all its franchises, was bought by said Hay for $12,500 cash, which was paid, which sum, together with the judgments, decrees and secured deed of trust, bought in as aforesaid, with the other moneys advanced by said Hay and his associates, made the cost of said road not much short of $150,000 in gross amount; the whole of which sale and proceedings is made part hereof in said exhibit A, pages 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.

35. That at this sale A. Thos. Bradley, one of the trustees in the said deed of trust to the corporation, appeared and gave notice to the purchaser of the said deed of trust in favor of the corporation, which greatly reduced the competition in bidding.

36. That by the laws of Virginia, made part of the charter of said company, in the event of a sale of the property and franchises
16 of a railroad company, and a conveyance be made pursuant thereto, the original company is ipso facto dissolved, and said purchaser forthwith becomes a corporation under any name or title which he may designate in the conveyance to him or any writing which he may file in the office where the said conveyance is recorded, as will more fully appear by reference to the said exhibit A, pages 8, 9, made part hereof.

37. That said Hay, in pursuance of said law, styled the corporation so created by virtue of said purchase, the Washington, Alexandria and Georgetown Railroad Company, (meaning to extend their

said road up to Georgetown on the south side of the river,) and accordingly notified the said Stewart, as trustee aforesaid, who did, in due form of law, by deed properly executed, convey the whole of the said Washington and Alexandria railroad to the said Hay and Joseph Thornton as a corporation; and at the same time, by virtue of their direction, to the said new corporation and company, the said Washington, Alexandria and Georgetown Railroad Company, in which all and singular the said rights, titles, franchises and estates of said railroad now vests, as will more fully and at large appear by reference to said deed bearing date the 14th day of April, 1862, which is made part hereof, marked exhibit H.

33. The said Washington, Alexandria and Georgetown Railroad Company being thus created, the corporation and stockholders thereof did, on the 3d day of May, 1862, meet and organize the same by the adoption of proper by-laws and regulations, and the election of the proper complement of directors and other officers for the management of its affairs, and at once employed a competent engineer and other agents to conduct and manage their said road, as will more fully appear by reference to exhibit A, pages 23 to 28.

39. That said company could not render their road as useful to the public as it was their wish to do until they could get their charter extended across the Potomac river, and the right-of-way granted them as aforesaid, through the corporation of Washington to the Baltimore and Ohio depot ratified by Congress. That with a view to secure this important public improvement they submitted their memorial to the Congress of the United States in that behalf, but they had no sooner moved in that object than they found themselves assailed and opposed by a lurking opposition of a faction in the board of common council, which will be more fully stated presently.

17 40. That the House of Representatives in Congress, after mature deliberation, reported and passed a bill for the extension of the charter of the said road, known as House Bill No. 468, which was then pending before the Senate.

41. That in the meantime the two boards of the city councils were disputing about the acceptance of the proposition of said Hay, submitted, as aforesaid, on the 11th of January, 1862, proposing to retire the outstanding portion of the city endorsement which proposition was now assumed by the present company, the board of aldermen insisting on the passage of their ordinance closing the matter, while the majority of the lower board rejected it unless the present company would consent to a much larger sum than that agreed upon with the board of aldermen. After keeping the matter pending for over a year, a committee appointed by the common council, composed of Messrs. Thompson, Gordon and Utermehle, made conflicting reports. The majority, composed of Messrs. Thompson and Gordon, made an elaborate report in which they succeeded in showing that the corporation violated its charter in assuming to endorse the said certificates, and had equally violated the ordinance, authorizing the same to be done. That the whole debt thus created was illegal and void, and that the city councils had been appropriating

money to pay what it did not owe. Yet notwithstanding their repudiation of the debt, as to its legality, these two gentlemen advise the city council not to accept the fifty cents in the dollar in settlement of their void demand and protested dispute, which said report is made part hereof, marked exhibit B, No. 2.

The minority report made by Mr. Utermehle is also referred to as part of the history of this case, marked exhibit B, No. 3.

42. That the said common council, or the majority of the same, being unable to extort any other offer or terms from these complainants than those stated as aforesaid, appointed a special committee to appear before Congress and the Senate committee and oppose the passage of the said House bill for the extension of the charter of their said road across the Potomac, and in their efforts imposed upon the complainants great labor, trouble and expense. The said bill, however, did pass, and was approved by the President, March 3d, 1863, and which is made part hereof, marked C, No. 2.

Soon after the passage of the law aforesaid, entending their charter, the complainants commenced the construction of the proposed bridge across the Potomac with the view of connecting the said road
18 through the city, and did, for that purpose, on the 6th day of April, 1863, contract with competent and responsible parties for the building of said bridge at a cost of about $130,000, which work is now being rapidly completed, and is to be ready for use about the middle of the coming November.

43. That about the time these steps were being taken by the complainants they were again assailed by a demand from the city council demanding the whole of said debt repudiated by themselves as aforesaid, and if not complied with threatening suit, and to do other things designed to harrass and annoy the complainants. Whereupon the complainants, by a written communication in answer to said demand, withdrew their offer of the 11th January, 1862, which seemed only to invite abuse and misrepresentation on the part of those who represented the corporation, which said answer and response is made part hereof, marked exhibit C, No. 3.

44. That since the communication last above-mentioned, the complainants have, for the use of their said road, and in order to complete the same and render it useful to the public, purchased real estate, to wit, square No. 269, at the foot of Maryland avenue, near the Potomac river, in order to get access to the new bridge now being built, for which the complainants pay $20,000. Of this sum $5,000 is paid, and their obligation is given for $15,000. They have also purchased a half square in Alexandria, for which they have paid, cash, $3,000. The complainants have also issued their obligations for $100,000, payable in twenty years, which are now being negotiated in the market for money applied to the construction of said bridge.

45. The complainants have also had an account rendered against them on the part of the United States for $85,612, being for material and repair made and furnished to their road under the agreement entered into with the Secretary of War in the fall and winter of 1861.

It was in the first place an individual obligation on the part of said Hay and his associates, but the account is now rendered as against the Washington, Alexandria and Georgetown Railroad Company, as will more fully appear by reference to said account, made part hereof, marked exhibit D, No. 2.

46. The complainants further state, that the entire obligations they have created and assumed are as follows:

Debt to the U. S. for material and repairs		$85,612 00
Bonded debt, at 20 years		100,000 00
19	To contractors for building bridge, as per agreement, say	130,000 00
Real estate		23,000 00
	Total	$338,612 00

The complainants have paid about one-half of the above obligations, or say sixty per cent. of the whole, leaving an existing indebtedness of about $132,000.

47. The complainants have also, since the reorganization of their company, paid off and assumed the various debts, amounting to several thousand dollars, which were contracted with laborers on the said road in its first construction, but which were not provided for in any of the deeds of trust, or reduced to judgments, being due to poor people not able to litigate, but which were nevertheless just, and were so treated by the complainants. Of this class of debt about one thousand dollars remain unpaid, but which are assumed by these complainants.

48. The complainants have also met and defrayed all the current expense of said road both before and since its present organization, commencing from the time they took charge of it in 1861, which have amounted to some $18,000.

49. The complainants further state, that the said corporation of Washington, after having, in violation of its charter and fundamental law, assumed to endorse said certificates, and having accepted a deed of trust from the said French, who had no right to execute the same as aforesaid, or to issue said certificates in manner and form, and at the time the same was done, all which was in violation of law, and a fraud upon the real stockholders and just creditors of said road; and having at all times refused and neglected to contribute any means, or assume any burdens whatever for the preservation of the franchises, property and effects of said road, all of which has been done by the complainants; that the said corporation, after having for five years or more failed to foreclose and enforce the said deed of trust, or attempted to do so, to wit, since the first day of January 1858, at which it had the right to, and it was its duty in justice to other creditors, provided its said deed of trust was valid in law or in equity; but having failed and refused so to do, whereby it has committed continued and repeated laches to the great prejudice and injury to

the rights of the complainants, and having refused all and every means of just and equitable settlement, as offered by these
20 complainants, though it was not admitted to have or hold any valid lien, but on the contrary the said corporation at all times pursued a course most detrimental to the character and credit of said road, by using harsh and abusive epithets and statements in the deliberations of its public councils, have now, and at a time when these complainants are engaged in large and extensive works and purchases for their said road, requiring large sums of money, and renewed negotiations for which the obligations of the complainants are in the market for negotiation and sale—the mayor of the said corporation of Washington has given orders to said Joseph H. Bradley and A. Thomas Bradley, trustees in said deed of trust first abovementioned, to make sale of the complainants' said road, and which is now advertised for sale on the 16th day of September, at the courthouse in the city of Alexandria, as will more fully appear by reference to the advertisement made part hereof, marked exhibit E, No. 2.

The complainants, therefore, in consideration of the matters and facts in the premises stated, and with a view of being protected from the many and repeated injuries so committed and threatened by the said corporation of Washington, and to the end also of restraining the said defendants and either and all of them from the making or causing to be made said sale, and also that the said so-called deed of trust or instrument of writing so executed to the defendants, or either of them as aforesaid, may be considered adjudged of, and so far canceled by this honorable court as to protect the complainants from further threats, injuries or embarrassments by the same, do make this their bill quia timet, and ask for a perpetual injunction against said defendants and each and all of them. And as special cause for relief in this behalf, the complainants do aver and charge as follows:

1st. The complainants aver and charge that the said Alexandria and Washington Railroad Company, as first above mentioned, had no right, power or authority by virtue of their said charter or the code of Virginia made part thereof, to borrow money on the said 19th day of April, 1855, for the reason that the subscription for the stock of said road had not been paid up and appropriated in the construction of said road as required by the code of Virginia aforesaid. On the contrary, no part of the said subscription had been paid up and appropriated as required by law, of which the defendants failed to take notice, as their duty required them to do.

2d. The complainants charge that the said papers issued
21 and signed by said James S. French were not the proper certificates or obligations of the said Alexandria and Washington Railroad Company, for the reason they were not authorized by the board of directors, as required by law, and do not upon their face purport to have received the approval of the said board of directors, but were the papers and certificates of James S. French, who could not bind the said company or pledge its faith or franchises by such his individual action and undertaking.

3d. The complainants charge that the said instrument of writing

called a deed of trust, executed to Joseph H. Bradley and A. Thomas Bradley, on the 19th day of April, 1855, was not the act and deed of the said Alexandria and Washington Railroad Company, for the reason that the said James S. French, who signed said deed, did so without the authority or approval of the board of directors of said company, who never authorized the same to be signed, nor approved the same after it was signed. And that the defendants thereby acquired no rights whatever in law or in equity against said railroad company or the franchises and property of the same specified in said deed of trust, which was and is null and void in law and equity, as against said company.

4th. The defendants charge that the said corporation of Washington had no right, power, or authority whatever, by virtue of the charter of said corporation, to endorse, or bind itself to endorse, or assume, or guarantee the payment in part or in whole of the said certificates or bonds of the said railroad company, so issued as aforesaid, for the reason that there is no such express or implied power or authority in the charter of the said corporation, but, on the contrary, the 10th section of the charter of the corporation of Washington declares, "That the corporation shall not have power to increase the present funded debt of the said city, either by borrowing money or otherwise, unless it shall be agreed to do so by two-thirds of the legal votes of said city at an annual election." That said charter was enacted by Congress in the year 1848, and was the fundamental law for the government of the said corporation in April, 1855, and is so at this time. That the said act or ordinance authorizing such endorsement was a violation of such charter, and was and is null and void, and that the act of the then mayor and register in writing their names on said certificates created no obligation on the said corporation whereby the same could be legally or equitably bound to
22 pay, or thereby create a valid charge upon the people or revenues of said city; and the said act of endorsement and debt thereby created never having been authorized or agreed to by two-thirds of the legal voters of said corporation, either before or after the endorsing of the same, no obligation was thereby created, and all moneys paid or appropriated in that behalf, or debt contracted, or money borrowed therefor, was and is unauthorized and void.

5th. The complainants charge the said corporation with having no right or authority to make such endorsement, rendered no consideration, and acquired no right whatever at law or in equity under and by virtue of said deed of trust executed on the 19th day of April, 1855, as aforesaid, and that no rights or equities thereby were vested in said Joseph H. and A. Thomas Bradley, as trustees aforesaid, to administer or enforce according to said deed, but the same is wholly and absolutely null and void, so far as the said corporation of Washington is named as a cestui que trust.

6th. The complainants charge that by the said ordinance of said corporation authorizing said endorsement aforesaid, made it conditional upon the fact that the proceeds of the said $60,000 certificates

would be sufficient to complete and equip said railroad, and constituted a committee composed of the said mayor and two other persons to ascertain that fact before the endorsement of the same; that the said mayor and co-committee wholly failed to obey or observe the requirements of said ordinance, or to ascertain the fact, which was notorious, that said said certificates, or the proceeds of the same, would not complete and equip said road; that debts to a much larger amount were then contracted and unpaid, and that it required more than twice that amount in addition thereto to complete said road, which was supplied as hereinbefore stated. Whereby the condition never occurred when such endorsement could be legally made according to said ordinance, and that the act of said mayor and register in doing so was null and void and created no legal obligation against or in favor of said corporation.

7th. The complainants charge that, in fact, there never was any such endorsement made for the use of said railroad company, as by the said ordinance and deed of trust contemplated and specified. Nor were such certificates ever endorsed and delivered to said railroad company, or the proceeds thereof applied to the completing and equipment of said railroad. On the contrary, the said certificates, when the said certificates were so signed by said French and endorsed by the said mayor and register of Washington, $5,000 of the
23 same were paid to James C. McGuire in satisfaction of a pre-existing debt; $8,000 or $10,000 were delivered to Walter Lenox for his services in procuring their endorsement; and the remaining quantity, to wit, $45,000 or $47,000, were, by the said mayor of Washington, hypothecated with Riggs & Co. and money borrowed thereon by him, the said mayor of Washington, who checked for the same, and which was not applied to the said railroad company, but, as complainants are informed and so charge, used, to the amount of $23,000 or $25,000, in purchasing the capital stock of the Washington and Alexandria Turnpike Company by said French and others, who held it and treated it as their private property, and that said hypothecation of said certificates and perversion of their proceeds by the act of the executive head of the corporation was a violation of and departure from the intents and purposes of said deed of trust, and deprives the said corporation of all equities therein, and rendered void and inoperative the said deed of trust, as against the said railroad company.

8th. The complainants charge that said corporation has been and is guilty of such laches as not now to be entitled to the enforcement of said deed of trust, even were it otherwise legal and valid. That the rights of said corporation, if any ever existed, were matured soon after the 1st day of January, 1858, and that they did not then or at any subsequent time offer to exercise, though repeatedly notified of such neglect and laches, and they were aware that said French and his co-directors were abusing the franchises and property of said road, and not discharging its obligations. That when said road was stripped and robbed of all its rolling stock by said French, and its very franchise was endangered, the said corporation never offered or

contributed to preserve the same, or to instruct their said trustees, so that they could act in the premises; but, on the contrary, the said corporation then, and at all subsequent times, refused to aid or contribute to the reconstruction of said road, and continued to baffle and deal falsely with these complainants when they were, in self-defence, devoting their time, means and labor in the reconstruction and preservation of said road. And the said corporation, while being tendered a settlement on the part of these complainants, most equitable and just, tried, through a committee constituted in one of the boards, to defeat the act of Congress extending the charter of the complainants across the Potomac river, and did, and continued to do, other things designed to weaken and destroy the credit of the complainants in all
24 ways possible; and, now that their credit is most important to them, and while engaged in a work of the greatest importance to the corporation and people of Washington, to wit, the building a good and permanent road bridge across the Potomac, have adopted the present time to try to force the sale of the said railroad with a view of extorting from the complainants terms that are unjust, upon a demand that is illegal and void.

9th. These complainants further charge that said corporation have, by their acts and by the reports of their public committees adopted, declared null and void their said act of endorsement, and are now, and for some time have been, in open repudiation of their endorsement of said certificates; that two instalments of interest and one instalment of principal is now unpaid, and which the said corporation has publicly declared it did not owe by reason of the illegality of its endorsement made as aforesaid.

Wherefore, and in consideration of all and singular the matters and things alleged and charged in the premises, the complainants here tendering themselves to do and abide all that is just and equitable towards said defendants, and all of them, but to the end that the complainants shall not be further damaged, injured or harassed by said defendants by reason of said deed of trust, or the said sale advertised as aforesaid, do pray that the said defendants, the said mayor and corporation of Washington, and the said Joseph H. and A. Thomas Bradley, trustees, as aforesaid, may be enjoined and restrained by this honorable court from the further advertising and making of said sale so advertised on the 16th day of September, 1863, as aforesaid, or at any other time thereafter.

The complainants further pray that they may be quieted in the full and free exercise of their franchise, and that the deed of trust executed on the 19th day of April, 1855, to said Jos. H. and A. Thos. Bradley as aforesaid, may be declared null and void, and ordered canceled by this honorable court, so far as the same, or any part thereof, purports to vest any right or title whatever in the mayor or corporation of Washington, or the trustees therein named.

The complainants pray that this honorable court will, by its writ of subpena and injunction, cause the said mayor of Washington, to wit, the Honorable Richard Wallach, and the said Joseph H. Bradley and A. Thomas Bradley, to appear and answer all and singular

the statements and allegations of this bill; and that the com-
25 plainants should have all general and special relief, as herein prayed. And complainants will ever pray, &c.

STEWART & STEVENS,
For Complainants.
H. L. STEVENS,
Of Counsel.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Alexander Hay, being duly sworn according to law, states that he has read the foregoing bill of complaint, and knows the contents thereof; that the matters and things therein stated of his own knowledge he knows to be true; and that the matters and things stated upon information he believes to be true.

ALEXANDER HAY.

Sworn to and subscribed before me September 1st, 1863.
R. J. MEIGS, *Clerk.*

26 *Exhibit "A," (p. 1, P.)—Acts of the General Assembly of the State of Virginia.*

CHAPTER LXIII.

AN ACT to incorporate a company to construct, on the plan of James S. French, a railroad between Alexandria and Washington City. Passed February 27, 1854.

1. Be it enacted by the general assembly: That it shall be lawful to open books of subscription at the city of Alexandria, under the direction of James S. French, John W. Maury, A. J. Marshall, Cornelius Boyle, George French, Edgar Snowden, and R. W. Latham, or any two of them, and at such other places under the direction of such agents as a majority of the above-named commissioners may appoint, for the purpose of receiving subscriptions to an amount not exceeding three hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock for constructing and operating a railroad, on the plan of James S. French, asset forth in the report of the committee of the house of delegates, document No. 65, session 1850-51, from the city of Alexandria, in the State of Virginia, to the city of Washington, in the District of Columbia, crossing the Potomac at some eligible point between the two cities.

2. Whenever two thousand shares shall have been subscribed, the subscribers, their executors and assigns shall be and are hereby declared and constituted a body politic and corporate, under the name and style of "The Alexandria and Washington Railroad Company," and shall be subject to all the provisions of the code of Virginia applicable thereto.

3. Provided, that it shall not be lawful for said company to connect with any other railroad terminating within the corporate limits of the city of Alexandria, without the consent of the city
27 councils thereof; and further, that the said company shall not

permit the said road to pass into the exclusive possession of any corporation without the limits of the commonwealth of Virginia; and provided further that the said road shall be finished within five years from the commencement of the work.

4. This act shall be in force from its passage, and the term of two of years shall be allowed to commence the road.

Exhibit "A," (p. 4, P.)—Laws of the corporation of the city of Washington.

AN ACT to extend the Alexandria and Washington Railroad from the Long Bridge to the Baltimore and Ohio Railroad Depot, and to the Washington canal.

CHAPTER XVI.

Be . . cted by the board of aldermen and board of common council of t. . ity of Washington, That the Alexandria and Washington Railroad Company be, and it is hereby, authorized and required to lay down and construct a single track of railway from the foot of the Long Bridge, along Maryland Avenue, to the intersection of said avenue and First street west; thence along said First street, across Pennsylvania Avenue, to Indiana Avenue; thence along Indiana Avenue to the Baltimore and Ohio railroad depot; and also to lay down and construct a lateral branch of the said road, commencing at the intersection of Maryland Avenue and Seventh street west, along said Seventh street, to the Washington city canal.

SEC. 2. And be it enacted, That the right be, and it is hereby granted to the said company to extend said track at the foot of Seventh street west, along the line of Canal street south, to and across Fourteenth [street] west: *Provided*, That the mayor shall assent to the distance from the canal at which the track shall be laid.

Approved July 27, 1855.

Exhibit "A," (p. 8, P.)—Power to borrow money.

27. No company which, by its charter, has no express power
28 so to do, shall borrow money until there shall be paid up and expended or appropriated the whole amount of capital stock subscribed, with the exception only of losses by delinquent or insolvent stockholders. But the president and directors may borrow an amount not exceeding that part of the capital stock which is unsubscribed, and may issue certificates for the money so borrowed, and may make such certificates convertible, within a prescribed time, into stock of the company, at the pleasure of the holder.

Exhibit "B."

AN ACT in relation to the Washington and Alexandria railroad.

Be it enacted by the board of aldermen and board of common council of the city of Washington, That for the purpose of aiding the Washington and Alexandria Railroad Company in the construction and equipment of a railroad from Alexandria, in the State of

Virginia, by the shortest practicable route to some convenient point in the city of Washington for connecting with the depot of the Baltimore and Ohio railroad, the corporation of the city of Washington agrees to guaranty the certificates of said company to the amount of sixty thousand dollars, bearing interest at the rate of six per cent. per annum, payable half yearly, and issuable in sums of not less than five hundred dollars, the said certificates payable in ten annual instalments of six thousand dollars each, commencing on the first day of January, eighteen hundred and fifty-eight, which said guarantee to the amount aforesaid shall be discharged and satisfied out of the ordinary revenues of this corporation within ten days from the maturing of said certificates respectively, and upon the surrender thereof to this corporation, and which said guarantee shall be evidenced by the certificates of the mayor, countersigned by the register, to be endorsed as such certificates to the amount aforesaid: Provided always, That the said company shall first execute an assignment to this corporation of all its rights, immunities, and property, as a security for the punctual payment of the interest and principal of said certificates; and further, that the said compony shall give such other security for the payment as shall be satisfactory to the committee hereinafter appointed, which said assignment and security shall enure to the benefit of the holders of said certificates: Provided, further, That the assent of this corporation shall be first ob-
29 tained to any other connection with said road than hereinafter provided for.

SEC. 2. And be it further enacted, That the mayor and one member from each board, to be selected by the presiding officer thereof, be appointed a committee, under whose direction the said certificates shall be issued, and the same or the proceeds thereof be applied exclusively to making of said road: Provided further, That said committee shall be satisfied that the certificates above guarantied will insure the completion and equipment of said road.

Whereupon Mr. John H. Houston, of the board of aldermen, and Mr. John P. Clements, of the board of common council, were appointed a committee in pursuance of the above section.

Exhibit "C."

$1,000. District of Columbia. No. 10.

The Alexandria and Washington Railroad Company acknowledge themselves to be indebted to ——— ———, or the holder hereof, in the sum of one thousand dollars, current money of the United States, payable at the banking house of Riggs & Co., in the city of Washington, on the first day of January, in the year eighteen hundred and fifty-nine, with interest thereon at the rate of six per cent. per annum, semi-annually, on the first day of July and the first day of January ensuing the date hereof, until the said principal sum shall be paid.

This certificate, and all rights and benefits arising therefrom, transferable by general or special endorsement, or by delivery.

In testimony, the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by the president and treasurer this eighteenth day of April, eighteen hundred and fifty-five.

JAS. S. FRENCH, *President.*
WALTER LENOX, *Treasurer.*

30 *Exhibit "D."*

MAYOR'S OFFICE, CITY OF WASHINGTON, *April* 18, 1855.

Be it known that it is hereby certified, in pursuance of the act of this corporation passed the 8th day of February, 1855, that the foregoing certificate No. 10, for $1,000, issued by the Alexandria and Washington Railroad Company, is guarantied by this corporation, and that the same will be discharged and satisfied by this corporation out of the ordinary revenues thereof within ten days from the maturity of said certificate, and after the surrender thereof to this corporation and the payment of the interest of said certificate semi-annually, according to the tenor thereof, is also guarantied by this corporation.

JNO. T. TOWERS, *Mayor.*
WM. McCORMICK, *Regisler.*

Exhibit "E."—Assignment.—Alexandria and Washington Railroad Company to Joseph H. and A. Thomas Bradley.

Recorded 26th April, 1855, in Liber J. A. S., No. 96, folios 367, 368, 369, 370, and 371.

This indenture, made this 19th day of April, in the year of our Lord eighteen hundred and fifty-five, between the "Alexandria and Washington Railroad Company," a corporation duly constituted by the laws of the State of "Virginia," of the first part, and Joseph H. Bradley and A. Thomas Bradley, of the city of Washington, of the second part, witnesseth:

That whereas the said parties of the first part are engaged in constructing a railroad from the city of Washington to the town of Alexandria, in the State of Virginia; and whereas, for the purpose of aiding said company in the construction and equipment of said road, the corporation of the city of Washington, by their certain act entitled "An act in relation to the Alexandria and Washington railroad," approved February 8, 1855, agreed to guaranty the certificates of said company to the amount of sixty thousand dollars, bearing interest at the rate of six per centum per annum, payable half
31 yearly, and issuable in sums of not less than five hundred dollars each, the said certificates payable in ten annual instalments of six thousand dollars each, commencing on the 1st day of January, 1858, signed by the mayor, and countersigned by the register of said corporation, to the effect aforesaid, upon certain terms and conditions, as by reference to said act will more fully appear, special reference being had herein to said act, as a part of these

presents; and whereas the said party of the first part are desirous that the said certificates, guarantied as aforesaid, shall be issued from time to time, as the wants of said company may require, and with the aid aforesaid have undertaken to complete and equip said road by the first day of December next ensuing; and in conformity with the provisions of said act, for the securing of the payment of said certificates and the interest thereon, as the same respectively, from time to time, become due and payable, and for the purpose of protecting the said corporation of Washington against all default in fulfilment of said undertaking to complete and equip said road by the first day of December next, the said parties of the first part agree to execute these presents.

Now, therefore, this indenture witnesseth that the said parties of the first part, in consideration of the premises, and of the sum of one silver dollar to them in hand paid at the sealing and delivery hereof, by the said parties of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, transferred and conveyed, and by these presents do grant, bargain, sell, transfer and convey to the said parties of the second part, their heirs, executors, administrators and assigns, and the survivor of them, his heirs, executors, administrators and assigns, all the following present and hereafter-acquired property of the said parties of the first part, that is to say, their road made or to be made, including the right of way and land occupied thereby, together with the superstructures and tracks thereon, and all rails and other materials used thereon or procured therefor, including the iron rails and other materials used thereon or procured therefor, including the iron rails and other materials purchased, or to be purchased, for the construction of said road, or paid for by the above described certificates, or the money obtained therefor, or with any other monies received by them; all bridges, viaducts, culverts, fences, depot grounds and buildings thereon, engines, tenders, cars, tools, materials, contracts and all other personal property now owned or hereafter to be acquired, right thereto or interest therein; and all rights, immunities and franchises of the said parties of the first part in, to, or concerning the same.

To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said parties of the second
32 part, their heirs, executors, administrators and assigns, and the survivor of them, his heirs, administrators and assigns, upon the following trusts, that is to say; that in case the said parties of the first part shall fail to pay the principal of said certificates, or any part thereof, or the interest, or any part of the same, at any time when the same may become due and payable, according to the tenor thereof, when demanded, or shall fail to complete and equip the said road by the time aforesaid, then, in any such case, upon the request of the corporation of the city of Washington, expressed through its councils or chief magistrate, or upon the request of the holder of such certificate or certificates of which the principal or the interest thereon may be due or payable, that the trustee or trustees shall forthwith enter into and take possession of all of the said premises

and dispose of the same, or so much and such parts thereof, at public auction or at private sale, and upon such terms of payment of the purchase money and security therefor as in the said particulars they or he shall deem best for the rights and interests of all parties, first giving thirty days' notice of the time, place and terms of said sale, by publishing the same in two of the principal newspapers printed and published in the city of Washington and town of Alexandria aforesaid, and, upon a full compliance of the terms of sale, the trustees shall execute to the purchaser or purchasers thereat a sufficient assignment of the machinery and personalty, and deed of conveyance in fee simple for the said premises; and after deducting from the proceeds of sale the costs and expenses thereof, including a reasonable commission for his or their trouble and responsibility, apply so much thereof as may be necessary to satisfy and discharge equally the principal and interest of all said certificates issued and guarantied as aforesaid by the "corporation of Washington" which may be then unpaid, with all costs thereon, whether all said certificates shall have matured or not, and without regard to date of issue, and the balance pay over to the said parties of the first part.

And the said parties, for themselves, their successors and assigns, do hereby covenant, for the consideration aforesaid, from time to time, and as often as the same may become necessary from the change or acquisition of property, to execute and deliver any further reasonable and necessary conveyance of the premises, or any part thereof, to the said parties of the second part, as shall from time to time be necessary, and the said trustees or trustee, or the counsel of the said corporation of Washington, shall reasonably advise or require, for the better securing the objects and purposes of these presents, and of embracing within the terms of this trust the said railroad, as
33 the same may be extended or constructed, and the property and effects so expressed to be mortgaged or so intended to be hereafter acquired.

In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president, and the said parties of the second part have hereunto set their hand and seal, the day and year first above written.

JAMES S. FRENCH,
President of Washington and Alexandria Railroad Company.

[Seal of Washington and Alexandria Railroad Company.]

[SEAL.] JOS. H. BRADLEY.
[SEAL.] A. THOS. BRADLEY.

Signed, sealed and deliver in presence of—
J. H. GODDARD.
T. C. DONN.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

We, J. H. Goddard and Thomas C. Donn, justices of the peace in and for the county aforesaid, do hereby certify that James S. French, party to a certain deed dated the 19th day of April, 1858, and hereunto annexed, personally appeared before us, in our county aforesaid, the said James S. French being well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 19th day of April, in the year of our lord 1858.

[SEAL.] J. H. GODDARD, *J. P.*
[SEAL.] T. C. DONN, *J. P.*

Test:

JOHN A. SMITH, *Clerk.*

Exhibit "A," (p. 4, P.)

AN ACT to authorize the Alexandria and Washington Railroad Company to issue coupon bonds. Passed February 27, 1856.

1. Be it enacted by the general assembly, That the Alexan-
34 dria and Washington Railroad Company, for the purpose of completing their road, be and they are hereby authorized to sell their bonds, with coupons annexed, to the amount of one hundred thousand dollars, at a rate of interest not exceeding seven per centum per annum, to be paid semi-annually.

2. This act shall be in force from its passage.

Exhibit "F."—Document B in report of sale.—Deed of trust.—Alexandria and Washington Railroad Company to Walter Lenox.

Deed trust recorded 25th July, 1857, in liber J. A. S., No. 138, folio 327, &c.

This indenture, made this 16th day of July, 1857, between the Alexandria and Washington Railroad Company, a company duly incorporated by an act of the general assembly of Virginia, of the first part, and Walter Lenox, of the city of Washington and District of Columbia, of the second part:

Whereas, by an act of the general assembly of Virginia, passed on the 27th day of February, 1856, the said Alexandria and Washington Railroad Company were authorized to sell their bonds, with coupons annexed, to the amount of one hundred thousand dollars, at a rate of interest not exceeding seven per cent. per annum.

And whereas, at a general meeting of the stockholders of said company, held on the 15th day of July, 1857, the president and directors of the company under the authority of said act, were authorized and directed, at such time or times hereafter as they may deem expedient,

to issue the bonds of the company, with coupons annexed, to the amount of one hundred thousand dollars, or such lesser portion thereof as they may deem proper, the interest to be at the rate of seven per cent. per annum, and to be payable semi-annually in the city of New York, and the principal to be payable at such time and place as the board may deem best for the interest of the company, and did further direct the board of directors to execute a mortgage or deed of trust on the property and franchises of the company to secure the payment of the principal and interest of said bonds, and to sell the said bonds to raise money for the use of the said company.

And whereas, the said president and directors, pursuant to the power and authority vested in them as aforesaid, have caused to be executed the bonds of the said company, bearing date on the 22d of July, 1857, which bonds are thirty in number, and are numbered from one to thirty inclusive, being for the sum of one thousand dollars each, and amounting in the aggregate to thirty thousand dollars; and which said bonds are to be severally authenticated by a certificate endorsed or signed by the party of the second part, and are payable to Walter Lenox or bearer, in the city of New York, on the 22d day of July, 1877, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the 22d day of January and on the 22d day of July of each year, at the Bank of Commerce, in New York, on the presentation and delivery of the interest coupons annexed to said bonds, signed by the treasurer of the company. The payment of which bonds, and the interest thereon, the said company desires to secure according to the tenor of the said bonds respectively.

Now this indenture witnesseth, that the said Alexandria and Washington Railroad Company, in consideration of the premises aforesaid, and of ten dollars to the company in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, assigned and set over, conveyed and confirmed, and do by these presents grant, bargain and sell, assign, set over, convey, and confirm unto the said party of the second part, his successors in the trust hereby created, and his or their assigns, all the railroad of said company made or to be made between its terminus in the city of Alexandria and State of Virginia, the depot of the Baltimore and Ohio Railroad Company, in the city of Washington, in the District of Columbia, together with the franchises of said company, and all the property, rights, and privileges of the company pertaining thereto; to have and to hold the same and every part thereof unto the said party of the second part, his successors in said trust, and his or their assigns forever; upon trust, however, for the following uses, intents and purposes, and none other; that is to say, the said company shall remain in quiet and peaceable possession of the said railroad, and all the property, rights, privileges and franchises above mentioned, and shall have the control, management and use of the same, with the income and profits thereof. But in the event said company shall fail to pay the interest on said bonds, so that there shall be at any time six months' interest wholly due and

unpaid, or in case of failure to pay the principal and interest for the period of six months after the said bonds shall have become due and payable according to the tenor thereof, and payment be demanded, then, or in either case, the said trustee, or his successors in
36 trust, shall, upon the request in writing of the holders of at least three-fifths of said bonds, cause the aforesaid premises and the property hereby conveyed, or so much and such parts thereof as may be necessary for the purpose, to be sold at public auction to the highest bidder for ready money, in the city of Alexandria, after giving at least sixty days' notice of the time, place, and terms of sale in newspapers published in each of the cities of Alexandria, Washington city and New York, and shall convey the same to the purchaser or purchasers thereof, and shall apply the proceeds of such sale (after deducting the expenses of sale, and the costs and charges attending the execution of this trust, including such compensation to the trustee as is usually allowed by the judge of the Circuit Superior Court of law and chancery for Alexandria county in trust deeds) in discharge of the principal and interest upon said bonds, or such of them as may then be due and outstanding, and the residue thereof to the parties of the first part or their assigns. But if the party of the first part shall well and truly pay the semi-annual interest on said bonds as the same may become due and payable, and is demanded of, and shall also pay and discharge the principal of said bonds when the same becomes payable according to the tenor thereof and is demanded, then this indenture to be void; otherwise to remain in full force.

And it is mutually agreed that in case of the death, incapacity, or resignation of the party of the second part, or of his successors in this trust, then the office of trustee filled by him shall become vacant, and such vacancy shall be filled by an appointment to be made by any court of record in the county of Alexandria, on the application of the parties of the first part, or of the holders of three-fifths of said bonds: Provided, however, in the last case notice of the application of the parties making such request be given to the president or one of the directors of said company, and all the rights, power and authority hereby conferred on the original trustee shall then and there devolve upon and be invested in his successor or successors so appointed.

And it is further agreed, that the said party of the second part, and his successors in said trust, shall be accountable for reasonable diligence only in the management thereof, and shall not be responsible for the acts of any agent employed by him or them when such agent is selected with reasonable discretion. This conveyance is made to secure the payment of the thirty bonds aforesaid, for one thousand dollars each numbered as aforesaid, with the semi-annual interest, and takes precedence as a security over any conveyance which may be made to secure the remaining sum of seventy thousand dollars for which the company are authorized
37 to issue their bonds, or any portion thereof; but is subject, however, to a deed of trust issued by the said Alexandria and

Washington Railroad Company to Joseph H. Bradley and A. Thomas Bradley, of Washington city, dated the 19th day of April, 1855, and duly of record in the land records of Washington county, in the District of Columbia, and in the County Court of Alexandria county, in the State of Virginia, conveying the said road, with all its rights, franchises and property to the said trustees, to secure the payment of the principal and interest of sixty thousand dollars in the bonds of the company guarantied by the city of Washington.

And it is hereby agreed that the existing lien to the city of Washington for sixty thousand dollars shall retain its priority over this deed, and be subject to any change or modification which may be agreed upon by the said city and railroad company; or a new lien, in place of the existing one to the city of Washington, to the extent of sixty thousand dollars, may be made in the said railroad company, which shall maintain its priority over its deed of this deed of trust made to secure thirty thousand dollars in the bonds of the company.

In testimony whereof the said party of the first part have caused this indenture to be signed by their president, and the corporate seal of said company to be hereto affixed, and the party of the second part has hereto set his hand and seal the day and year first above written.

JAMES S. FRENCH.
President A and W. R. R. Co.

[Alexandria and Washington Railroad Company.]

WALTER LENOX, *Trustee.*

[SEAL.]

Signed, sealed and delivered in presence of—
F. I. MURPHEY.
J. H. GODDARD.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded, Will book No. 8, page 117, and examined and delivered.

J. TACEY, *Clerk.*

At a meeting of the board of directors of the Alexandria and Washington Railroad Company, held in their office in the city of Alexandria, on the 15th day of July, 1857, Benjamin Hallowell was called to the chair, and R. M. Smith was appointed secretary. A draft of a deed of trust from this company to Walter Lenox, bearing
38 date the —— day of July, 1857, which, when executed, will convey to the said Walter Lenox the railroad property and franchises of the company to secure the payment of the coupon bonds of the company to the amount of thirty thousand dollars, and the semi-annual interest thereon at the rate of seven per cent. per annum, with power to the said Lenox, upon certain contingencies therein mentioned, to take possession of and sell the property conveyed, was submitted to the board, and on motion it was unanimously resolved that the board approve the said draft, and do hereby authorize the president to execute the same by signing his name and

affixing the corporate seal of the company thereto, and to acknowledge the same when so executed as the act and deed of the company, the same being done in conformity with the resolution adopted on the 15th day of July, 1857, by the stockholders of said company, as appears from the minutes of their meeting.

BENJAMIN HALLOWELL,
Chairman.

A copy from the minutes.

R. M. SMITH, *Secretary.*

DISTRICT OF COLUMBIA, *County of Washington, to wit*:

Be it remembered, that on this 25th day of July, in the year of our Lord one thousand eight hundred and fifty-seven, before the subscribers, two justices of the peace in and for the county of Washington aforesaid, personally appears James S. French, president of the Alexandria and Washington Railroad Company, and acknowledges the foregoing deed of trust or instrument of writing to be the act and deed of the Alexandria and Washington Railroad Company, delivered for the use and purposes therein expressed.

Given under our hands and seals the day and year first hereinbefore written.

[SEAL.] J. H. GODDARD, *J. P.*
[SEAL.] F. I. MURPHEY, *J. P.*

True copy, test:

JOHN A. SMITH, *Clerk.*

Exhibit "G."

WASHINGTON, D. C., *January* 11, 1862.

Hen. R. Wallach, Mayor:

SIR: Representing as I do a large amount of indebtedness
39 against the Alexandria and Washington railroad, and being aware of the demands of the city of Washington against the same, by virtue of her guaranty of certain bonds, and desiring, as far as possible, to protect the interest of all concerned, and in response to your verbal suggestions to me on yesterday, I respectfully propose as follows:

1st. I will assume the liability of the city from this time forward, and save it, harmless, from any further demand, either for the principal or interest, on said bonds.

2d. I will keep on deposit, to the credit of the city, a sum of money equal to the semi-annual interest to accrue due.

3d. I will pay the annual instalments of the principal of said bonds, (say $6,000,) as the same becomes due, in discharge of the city's obligations.

4th. I will reconstruct and remount said road in good working order, adopting the best and most substantial mode of construction. This estimate for this purpose exceeds $60,000.

5th. I will execute to the city a new deed of trust on the road, covering all these improvements so to be made, as security for the faithful performance of this undertaking, besides keeping the current interest on deposit as aforesaid.

6th. In consideration of the premises, the city will convey to me and my associates all its right, title, and interest in and to said road. To enable me to operate effectively, I should be informed by Tuesday next of the acceptance of this proposition.

The material has all to be purchased, which will be done so soon as informed of the agreement to the above effect being acceded to.

Respectfully,

ALEXANDER HAY.

P. S. I will take occasion to add that the government has, I regret to say, persistently refused to purchase said railroad. Hence there is no way for myself or the city to secure our respective indebtedness but to rebuild and use the road. I have indicated the terms upon which I am willing to do so.

ALEXANDER HAY.

This communication was referred to a select committee, consisting of Messrs. Brown, Fisher, Wilson, Morgan, and Shepherd, of the two boards; and on the 10th of March, 1862, Messrs. Brown, Fisher, and Wilson, reported the following joint resolutions, which passed the board of aldermen, but were neglected by the lower board:

40 Joint resolutions disposing of all the interest of the corporation in the Alexandria and Washington railroad to Alexander Hay:

Be it enacted, &c., That the proposition of Alexander Hay, dated January 11, 1862, proposing to purchase, upon certain conditions therein named, all the interest of this corporation in the Alexandria and Washington railroad, be and the same is hereby accepted: Provided, said Hay will agree, instead of giving the deed of trust, as proposed to pay, cancel, and file in the office of the register of this city all the outstanding bonds of the said railroad company guaranteed by the corporation of Washington, (thirty thousand dollars,) within ninety days from the date of the approval of these joint resolutions.

And be it further enacted, That the mayor be and he is hereby requested to take immediate steps to consummate the sale of the interest of the corporation in said road, by requesting the trustees named in the deed of trust of April 19, 1855, to take possession of the road and dispose of the same at private sale to said Hay, upon the terms and conditions aforesaid.

Exhibit A, (p. 13, P.)—Document A in report of sale.

At a term of the County Court of Alexandria county, Virginia, held in the court-house of said county, this third day of February, the following order was entered as a part of the proceedings of the court:

It appearing to the court from sufficient evidence this day produced that Walter Lenox, the trustee named in a certain deed of trust, bearing date on the 16th day of July, 1857, executed by the Alexandria and Washington Railroad Company to the said Lenox, for the security of $30,000 of the coupon bonds of the said company, and for other purposes therein mentioned, has become and is wholly incapacitated for executing the said trusts, or guarding the rights therein provided and created: The court is of the opinion, and so declares, that the trusteeship in said deed of trust has become vacant, and, on the application of Joseph Davisson, the attorney in fact of the holders of all the bonds in said deed of trust mentioned, the court doth appoint and substitute Joseph B. Stewart, of the city of Washington, as trustee in the place of the said Walter Lenox, and the said Stewart having this day accepted said trust in open
41 court, he is substituted to all the rights, privileges, duties, and responsibilities of the said Lenox as trustee under and by virtue of said deed of trust.

A true copy from the minutes.

Given under my hand and seal of the County Court of Alexandria county, this third day of February, A. D. 1862.

[SEAL.] Test: JEFFERSON TACEY, *Clerk.*

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded, Will Book, No. 8, page 121. Examined and delivered.

J. TACEY, *Clerk.*

Exhibit "E," (pp. 11 to 22, P.)

To the honorable judges of the County Court of Alexandria, State of Virginia:

Your petitioner, Joseph Davisson, of the city of Washington, District of Columbia, respecfully states that he is the lawful agent and attorney in fact of all the bonds and bondholders issued by the Alexandria and Washington Railroad Company, by authority of a special act of the Virginia legislature, and secured by a deed of trust executed by the president and directors of said road to Walter Lenox, as trustee, dated the 16th day of July, 1857, a copy of which is herewith exhibited and made part hereof.

Your petitioner further states that the said Walter Lenox has become wholly incapacitated for the exercise and performance of said trust; and that for many reasons it is important to the interests and

rights of said bondholders that the vacancy created in said trust by the abandonment of the same by the said Lenox should be filled as therein provided, and makes this petition in that behalf.

Your petitioner further states that he has made diligent search and inquiry for the president or some authorized director or officer of said railroad company, to whom to give notice of this application, but that he can find no such person, and is informed and believes that the president and corporators of said road have abandoned the franchises of the same, and gone beyond the jurisdiction of this honorable court.

42 To the end, therefore of protecting the interests and rights of the said bondholders, and preserving the trust in their behalf created and provided, your petitioner prays that Joseph B. Stewart, attorney-at-law, of Washington city, D. C., be appointed and created trustee in said deed of trust, in the place and in the stead of said Lenox, by order of this honorable court, and thereby empowered to do and perform, all and singular, the matters and duties therein designated and enjoined, and for such your petitioner will ever pray.

JOSEPH DAVISSON.

Sworn to before me, in open court, this third day of February, 1862.

JEFFERSON TACEY, *Clerk.*

And on the same date, to wit, February 3, 1862, the following deposition of Joseph Thornton was presented to the court, and made a portion of this record, to wit:

UNITED STATES OF AMERICA,
District of Columbia, City and County of Washington, ss:

Personally appeared before me, a justice of the peace in and for the city and district aforesaid, Joseph Thornton, who, being of lawful age and duly sworn according to law, doth depose and say, that he knows of his own personal knowledge that Joseph Davisson is the true and lawful agent of the bonds and bondholders, which are secured by a deed of trust executed by the Alexandria and Washington Railroad Company to Walter Lenox, dated 16th day of July, 1857, securing said bonds to the amount of thirty thousand dollars, bearing interest at the rate of seven per cent. per annum, which are now the property of Benjamin Thornton, the brother of this deponent, or his assigns, and that said Davisson has full power and authority to make this application to the honorable County Court of the county of Alexandria, State of Virginia, hereunto annexed; and that his said act is entitled to full credit and respect by any and all civil jurisdiction to whom it is addressed, having authority over the subject-matters therein named, and further saith not.

JOSEPH THORNTON.

Subscribed and sworn to before me, this 21st day of January, 1862.

THOMAS C. DONN, *J. P.*

Whereupon, upon the date aforesaid, (February 3, 1862,) the court did make the following order:

43 It appearing to the court, from sufficient evidence this day produced, that Walter Lenox, the trustee named in a certain deed of trust, bearing date on the 16th day of July, 1857, executed by the Alexandria and Washington Railroad Company, to the said Lenox, for the security of $30,000 of the coupon bonds of the said company, and for other purposes therein mentioned, has become, and is wholly incapacitated for executing the said trusts or guarding the rights therein provided and created, the court is of the opinion, and so declares, that the trusteeship in said deed of trust has become vacant; and on the application of Joseph Davisson, the attorney in fact of the holders of all the bonds in said deed of trust mentioned, the court doth appoint and substitute Joseph B. Stewart, of the city of Washington, as trustee in the place of the said Walter Lenox; and the said Stewart having this day accepted said trust in open court, he is substituted to all the rights, privileges, duties and responsibilities of the said Lenox, as trustee under and by virtue of said deed of trust.

STATE OF VIRGINIA, *Alexandria County, to wit:*

I, Jefferson Tacey, clerk of the County Court for the county aforesaid, in the State of Virginia, do certify that the foregoing writings are true copies of the record in the proceedings before said court for the appointment of a substitute trustee in a deed of trust from the Alexandria and Washington Railroad Company to Walter Lenox.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court, this 8th day of February, A. D. 1864.

[L. S.] J. TACEY, *Clerk.*

Deed of trust.—Document B in report of sale.—Alexandria and Washington Railroad Company to Walter Lenox.

Deed trust, recorded 25th July, 1857, in liber J. A. S., No. 138, folio 327, &c.

This indenture, made this 16th day of July, 1857, between the Alexandria and Washington Railroad Company, a company duly incorporated by an act of the general assembly of
44 Virginia, of the first part, and Walter Lenox, of the city of Washington and District of Columbia, of the second part:

Whereas, by an act of the general assembly of Virginia, passed on the 27th day of February, 1856, the said Alexandria and Washington Railroad Company were authorized to sell their bonds, with coupons annexed, to the amount of one hundred thousand dollars, at a rate of interest not exceeding seven per cent per annum.

And whereas, at a general meeting of the stockholders of said company, held on the 15th day of July, 1857, the president and directors of the company, under the authority of said act, were authorized and directed, at such time or times hereafter as they may deem ex-

pedient, to issue the bonds of the company, with coupons annexed to the amount of one hundred thousand dollars, or such lesser portion thereof as they may deem proper, the interest to be at the rate of seven per cent. per annum, and to be payable semi-annually in the city of New York, and the principal to be payable at such time and place as the board may deem best for the interest of the company, and did further direct the board of directors to execute a mortgage or deed of trust on the property and franchises of the company to secure the payment of the principal and interest of said bonds, and to sell the said bonds to raise money for the use of the said company.

And whereas the said president and directors, pursuant to the power and authority vested in them as aforesaid, have caused to be executed the bonds of the said company, bearing date on the 22d of July, 1857, which bonds are thirty in number, and are numbered from one to thirty inclusive, being for the sum of one thousand dollars each, and amounting in the aggregate to thirty thousand dollars; and which said bonds are to be severally authenticated by a certificate endorsed or signed by the party of the second part, and are payable to Walter Lenox or bearer, in the city of New York, on the 22d day of July, 1877, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the 22d day of January and on the 22d day of July of each year, at the Bank of Commerce, in New York, on the presentation and delivery of the interest coupons annexed to said bonds, signed by the treasurer of the company. The payment of which bonds, and the interest thereon, the said company desire to secure according to the tenor of the said bonds respectively.

Now, this indenture witnesseth, that the said Alexandria and Washington Railroad Company, in consideration of the premises aforesaid, and of ten dollars to the company in hand paid by the
45 said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, assigned and set over, conveyed and confirmed, and do, by these presents, grant, bargain and sell, assign, set over, convey and confirm unto the said party of the second part, his successors in the trust hereby created, and his or their assigns, all the railroad of said company, made or to be made between its terminus, in the city of Alexandria and State of Virginia, the depot of the Baltimore and Ohio Railroad Company, in the city of Washington, in the District of Columbia, together with the franchises of said company, and all the property, rights and privileges of the company pertaining thereto; to have and to hold the same, and every part thereof, unto the said party of the second part, his successors in said trust, and his or their assigns forever; upon trust, however, for the following uses, intents and purposes, and none other, that is to say, the said company shall remain in quiet and peaceable possession of the said railroad, and all the property, rights, privileges and franchises above mentioned, and shall have the control, management and use of the same, with the income and profits thereof. But in the event said company shall fail to pay the interest on said bonds, so that there shall be at any time

six months' interest wholly due and unpaid, or in case of failure to pay the principal and interest for the period of six months after the said bonds shall have become due and payable, according to the tenor thereof, and payment be demanded, then, or in either case, the said trustee, or his successors in this trust shall, upon the request in writing of the holders of at least three-fifths of said bonds, cause the aforesaid premises and property hereby conveyed, or so much and such parts thereof as may be necessary for the purpose, to be sold at public auction to the highest bidder for ready money, in the city of Alexandria, after giving at least sixty days' notice of the time, place and terms of sale in newspapers published in each of the cities of Alexandria, Washington city and New York, and shall convey the same to the purchaser or purchasers thereof, and shall apply the proceeds of such sale, (after deducting the expenses of sale, and the costs and charges attending the execution of this trust, including such compensation to the trustee as is usually allowed by the judge of the Circuit Superior Court of law and chancery for Alexandria county in trust deeds,) in discharge of the principal and interest upon said bonds, or such of them as may then be due and outstanding, and the residue thereof to the parties of the first part, or their assigns. But if the party of the first part shall well and truly pay the semi-annual interest on said bond, as the same may become due and payable, and is demanded of, and shall also pay and dis-
46 charge the principal of said bonds when the same becomes payable according to the tenor thereof, and is demanded, then this indenture to be void; otherwise to remain in full force.

And it is mutually agreed, that in case of the death, incapacity or resignation of the party of the second part, or of his successors in this trust, then the office of trustee filled by him shall become vacant, and such vacancy shall be filled by an appointment to be made by any court of record in the county of Alexandria, on the application of the parties of the first part, or of the holders of three-fifths of said bonds: Provided, however, in the last case, notice of the application of the parties making such request be given to the president or one of the directors of said company, and all the rights, power and authority hereby conferred on the original trustee shall then and there devolve upon and be invested in his successor or successors so appointed.

And it is further agreed, that the said party of the second part, and his successors in said trust, shall be accountable for reasonable diligence only in the management thereof, and shall not be responsible for the acts of any agent employed by him or them when such agent is selected with reasonable discretion. This conveyance is made to secure the payment of the thirty bonds aforesaid, for one thousand dollars each, numbered as aforesaid, with the semi-annual interest, and takes precedence as a security over any conveyance which may be made to secure the remaining sum of seventy thousand dollars for which the company are authorized to issue their bonds, or any portion thereof, but is subject, however, to a deed of trust issued by the said Alexandria and Washington Railroad Company to

Joseph H. Bradley and A. Thomas Bradley, of Washington City, dated the 19th day of April, 1855, and duly of record in the lands records of Washington county, in the District of Columbia, and in the County Court of Alexandria county, in the State of Virginia, conveying the said road, with all its rights, franchises and property, to the said trustees, to secure the payment of the principal and interest of sixty thousand dollars in the bonds of the company guarantied by the city of Washington.

And it is hereby agreed, that the existing lien to the city of Washington for sixty thousand dollars shall retain its priority over this deed, and be subject to any change or modification which may be agreed upon by the said city and railroad company, or a new lien, in place of the existing one to the city of Washington, to the extent of sixty thousand dollars, may be made in the said railroad company, which shall retain its priority over its deed of this deed of trust made to secure thirty thousand dollars in the bonds of the company.

47 In testimony whereof the said party of the first part have caused this indenture to be signed by their president, and the corporate seal of said company to be hereto affixed, and the party of the second part has hereto set his hand and seal the day and year first above written.

JAMES S. FRENCH,
President A. and W. R.R. Co.

[SEAL.] WALTER LENOX.
Trustee.

[Alexandria and Washington Railroad Company.]

Signed, sealed and delivered in presence of—
F. I. MURPHEY.
J. H. GODDARD.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded, Will Book No. 8, page 117, and examined and delivered.

J. TACEY, *Clerk.*

At a meeting of the board of directors of the Alexandria and Washington Railroad Company, held in their office in the city of Alexandria, on the 15th day of July, 1857, Benjamin Hallowell was called to the chair, and R. M. Smith was appointed secretary. A draft of a deed of trust from this company to Walter Lenox, bearing date the day of July, 1857, which, when executed, will convey to the said Walter Lenox the railroad property and franchises of the company to secure the payment of the coupon bonds of the company to the amount of thirty thousand dollars, and the semi-annual interest thereon at the rate of seven per cent. per annum, with power to the said Lenox, upon certain contingencies therein mentioned, to take possession of and sell the property conveyed, was submitted to the board, and on motion it was unanimously resolved that the board

approve the said draft, and do hereby authorize the president to execute the same by signing his name and affixing the corporate seal of the company thereto, and to acknowledge the same when so executed as the act and deed of the company, the same being done in conformity with the resolution adopted on the 15th day of July, 1857, by the stockholders of said company, as appears from the minutes of their meeting.

BENJAMIN HALLOWELL, *Chairman.*

A copy from the minutes.

R. M. SMITH, *Secretary.*

48 DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Be it remembered that, on this 25th day of July, in the year of our Lord one thousand eight hundred and fifty-seven, before the subscribers, two justices of the peace in and for the county of Washington aforesaid, personally appears James S. French, president of the Alexandria and Washington Railroad Company, and acknowledges the foregoing deed of trust or instrument of writing to be the act and deed of the Alexandria and Washington Railroad Company, delivered for the use and purposes therein expressed.

Given under our hands and seals the day and year first hereinbefore written.

[SEAL.] J. H. GODDARD, *J. P.*
[SEAL.] F. I. MURPHEY, *J. P.*

True copy. Test:

JOHN A. SMITH, *Clerk.*

Power of attorney to Joseph Davidson, under the hand and seal of Mr. Benjamin Thornton.

BOROUGH OF LEEDS, IN THE COUNTY OF YORK.

To all to whom these presents shall come:

I, James Kitson, esq., mayor of the borough of Leeds, in the county of York, in that part of the United Kingdom of Great Britain and Ireland called England, in pursuance of the laws in that behalf, do hereby certify that, on the day of the date hereof personally came and appeared before me Benjamin Thornton, named in the power of attorney hereunto annexed, being a person well known and worthy of good credit, and who did before me solemnly and sincerely declare to be true the several matters and things mentioned and contained in the said power of attorney.

In faith and testimony whereof I, the said mayor, have caused the corporate common seal of the said borough to be hereunto put and affixed, and the said power of attorney to be hereunto annexed. Dated at Leeds aforesaid, the twentieth day of February, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.] JAMES KITSON,
Mayor of Leeds.

I, James William Marshall, consul of the United States of America at Leeds and the dependencies thereof, do hereby certify to
49 all whom it may or doth concern, that the above-written James Kitson, before whom the power of attorney hereunto attached has been acknowledged by Benjamin Thornton, is the mayor of the borough of Leeds aforesaid, and that the seal above attached is the corporate seal of the borough of Leeds aforesaid.

In testimony whereof I, the said consul, hereunto set my hand and affix my seal of office, at Leeds, this twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

[SEAL.] JAS. W. MARSHALL,
U. S. Consul.

This is the power of attorney referred to in my annexed certificate dated this twentieth day of February, 1862.

JAMES KITSON, *Mayor.*

Know all men by these presents that I, Benjamin Thornton, of Number 4 Brompton Square, in the county of Middlesex, in that part of the United Kingdom of Great Britain and Ireland called England, gentleman, have made, constituted and appointed, and by these presents do make, ordain, constitute and appoint Joseph Davison, of Washington city, and District of Columbia, in the United States of America, formerly a brewer, but now retired from business, my true and lawful attorney, for me and in my name, or otherwise, and for my use, to apply for, ask, demand and receive, and if necessary sue for and recover from the Alexandria and Washington Railroad Company and their assigns, or from the person or persons who, for the time being, may be liable to pay the same, all principal moneys and interest, and all and every sum and sums of money whatsoever secured by or due, or to become due, upon or in respect of thirty several bonds, each being under the corporate seal of the said railroad company, and also under the hand of "James S. French," president of the said company, and dated the twenty-second day of July, one thousand eight hundred and fifty-seven, and each bond purporting to secure to Walter Lenox, or bearer, one thousand dollars and interest, as therein mentioned, and which said bonds and the trust deed therein referred to are, or shortly will be, deposited in the bank of Messieurs Riggs and Company, of Washington city aforesaid, for safe custody, and upon payment of the same moneys, or of the sum of thirty thousand dollars into the said bank of Messieurs Riggs and Company, in full discharge of all principal and interest secured by the said bonds, to give a valid release and discharge for the same, and to give up the said bonds to the said
50 railroad company, or their assigns, or the person or persons who may pay the same; and also, for the purposes aforesaid, to present such petition or petitions, and to institute such proceedings at law or otherwise, and generally to do and perform all and every such acts and act, deed and deeds, in and about the conduct,

management, prosecution, suspension, or determination of any proceedings to be taken or prosecuted under this power as the said Joseph Davison may think expedient, as fully and effectually to all intents and purposes as the said Benjamin Thornton might or could do if personally present, the said Benjamin Thornton hereby agreeing to ratify and confirm whatsoever the said Joseph Davidson hath done, or shall lawfully do, or cause to be done, in or about the premises by virtue of these presents.

In witness whereof the said Benjamin Thornton hath hereunto set his hand and seal this twentieth day of February, one thousand eight hundred and sixty-two.

[SEAL.] BENJAMIN THORNTON.

Signed, sealed and delivered by the above-named Benjamin Thornton, in the presence of—

J. W. MARSHALL, *U. S. Consul.*
THOMAS RICHARDSON WRAY, *his Clerk.*

On the twentieth day of February, in the year of our Lord one thousand eight hundred and sixty-two, before me, the undersigned United States consul at Leeds, in England, personally appeared Benjamin Thornton, of Number 4 Brompton Square, in the county of Middlesex, England, gentleman, who is well known to me to be the person described in, and who executed the foregoing power of attorney, and acknowledged the same to be his act and deed, and declared that he had executed the same freely and voluntarily to the uses and for the purposes therein mentioned.

Given under my hand and seal of office, according to the date above, and of the independence of the United States the eighty-sixth.

[SEAL.] JAS. W. MARSHALL,
U. S. Consul.

Document C, in report of sale.

WASHINGTON CITY, D. C.,
February 4th, 1862.

SIR: As agent and attorney in fact for Benjamin Thornton, esq., of England, and others, owners of more than three-fifths of the
51 thirty thousand dollars of coupon bonds issued by the Alexandria and Washington Railroad Company, and secured by deed of trust dated 16th day of July, 1857, to Walter Lenox, as trustee, in whose place you are substituted, by order of the honorable county court of Alexandria county, Virginia, on the third instant—

I hereby notify you and request that you, as such substituted trustee, do proceed to advertise for sale, and do sell said railroad, with all its property and franchises, and apply the proceeds of sale as designated in said deed of trust, and do and perform such other matters and things as by virtue of said deed you are required as trustee aforesaid.

Witness my hand, as attorney and agent of Benjamin Thornton, esq., and others.

JOSEPH DAVISON.

To Joseph B. Stewart, esq., solicitor, Washington city, &c.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded, Will Book No. 8, page 121. Examined and delivered.

J. TACEY, *Clerk.*

Documents D, E and F, in report of sale.

Public sale of the Alexandria and Washington railroad, &c.

Default having been made by the Alexandria and Washington Railroad Company in the payment of the accrued interest on certain bonds mentioned and described in a certain deed of trust from said company to Walter Lenox, bearing date on the 16th day of July, 1857, and the undersigned having by an order of the County Court of Alexandria, made at its February term, 1862, been substituted and appointed trustee, under the said deed of trust, in place of said Lenox; and having been requested in writing by the holders of upwards of three-fifths of the bonds in said deed mentioned, I will, pursuant to said request, and of the provisions of said deed of trust, on Thursday, the 10th day of April, 1862, in front of the mayor's office, in the city of Alexandria, Virginia, at 12 o'clock m., sell at public auction for cash all the railroad of said company between its terminus in Alexandria, Virginia, and the depot of the Baltimore and Ohio railroad, in Washington, together with the franchises of said company, and all the rights and privileges of the company pertaining thereto, and all property embraced in or covered by said deed of trust.

NOTE.—A copy of the deed of trust above mentioned may
52 be inspected at my law office, in Washington city, No. 450 Pennsylvania avenue.

JOSEPH B. STEWART,
Substitued Trustee.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded Will Book No. 8, page 122. Examined and approved.

J. TACEY, *Clerk.*

Trustee's report of sale.

Report of sale of the Alexandria and Washington railroad, made this tenth day of April, 1862, and purchased by Alexander Hay, for the sum of $12,500.

By order of the honorable County Court of the county of Alexandria, State of Virginia, the undersigned was appointed trustee to discharge the duties imposed by a certain deed of trust executed by the Alexandria and Washington Railroad Company to one Walter Lenox, dated July 16, 1857, as will more fully appear by a copy of said order and said deed, filed herewith and made part hereof, marked A and B, which trusteeship the undersigned accepted.

On the 4th day of February, 1862, the day next after the date of said order, the undersigned received a written request from Joseph Davison, the attorney-in-fact and agent for more than three-fifths of the beneficiaries or holders of a certain thirty thousand dollars of coupon bonds, issued by said railroad company and secured by said deed of trust, the coupons of which were then more than due, requesting the undersigned to make sale of said railroad, according to the terms of said deed of trust, the original of which said request and notice is made part hereof, marked "C."

The undersigned, pursuant to said request and in obedience to the requirements of said deed of trust herein referred to, did cause said road to be advertised for sale for sixty days previous to the tenth day of April, 1862, in the "Local News," a paper published in Alexandria, and in the "National Intelligencer," a paper published in the city of Washington, and in the "New York Herald," a paper published in the city of New York, a certified copy of each of which publications is herewith exhibited and made part hereof, marked D, E and E.

And the undersigned, in pursuance of said notice, did, in the city of Alexandria, in front of the mayor's office, at the hour of twelve (12) o'clock m., on the said 10th day of April, 1862, as trus-
53 tee aforesaid, then and there make public proclamation of his duty and purpose to expose to sale said road, whereupon he was notified and requested to give notice of various and sundry liens, claims and charges upon said road, in the shape of deeds of trust, judgment at law, and suits pending, which were in due order proclaimed. And the undersigned then proceeded to solicit bids for said road under said deed of trust first above mentioned, to wit, a deed of trust dated the 16th day of July, 1857, to secure the principal and interest of thirty thousand dollars of coupon bonds, the purchase-money to be paid in ready money; and having made such proclamation of sale, proceeded in person to cry said road for sale, and soliciting bids for the same; whereupon, after several bids, Alexander Hay, esq., of Philadelphia, bid the sum of twelve thousand five hundred ($12,500) dollars, and there being no further bid or advance price offered, the said railroad, with all its franchises, rights, property and effects, as advertised as aforesaid, was struck off and declared sold to Alexander Hay,

esq., aforesaid; of all which fact and sale and purchase written memorandum was then and there made, duly attested by three disinterested bystanders and persons of mature age and judgment present at said sale, as will more fully appear by the said papers, filed with and made part hereof, marked G.

And the undersigned further reports that on this day the said Alexander Hay paid to the undersigned, as trustee aforesaid, the full and even sum of twelve thousand five hundred ($12,500) dollars, for which the undersigned gave his receipt, bearing date this tenth day of April, 1862, which payment, being a full compliance with said terms of sale, the said Alexander Hay is hereby declared the purchaser of said Alexandria and Washington railroad, with all and singular the rights, property, privileges and appurtenances of the same, of any and all description whatsoever.

Given under my hand and seal this tenth day of April, 1862.

[SEAL.] JOSEPH B. STEWART,
Trustee.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

This report was received in the office, and recorded in Will Book No. 8, pages 115, 116, 117, 118, 119, 120, 121, 122, 123 and 124.

Test: J. TACEY, *Clerk.*

54 CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded Will Book No. 8, pages 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, and examined and delivered.

J. TACEY, *Clerk.*

Exhibit "A," (pp. 8 and 9, P.)—Sale of company's property under a deed of trust.

28. If a sale be made under a deed of trust or mortgage, executed by a company on alls its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale, not only the work and property of the company as they were at the time of making the deed of trust or mortgage, but any works which the company may, after that time and before the sale, have constructed, and all other property of which it may be possessed at the time of the sale, other than debts due to it. Upon such conveyance to the purchaser, the said company shall, ipso facto, be dissolved, and the said purchaser shall forthwith be a corporation, by any name which may be set forth in the said conveyance, or in any writing signed by him and recorded in the court in which the conveyance shall be recorded.

29. The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights and privileges, and perform all such duties as would have been had or should have

been performed by the first company but for such sale and conveyance, save only that the corporation so created shall not be entitled to the debts due to the first company, and shall not be liable for any debts or of claims against the said first company which may not be expressly assumed in the contract of purchase, and that the whole profit of the business done by such corporation shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together the amount of stock in the first company at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper.

30. The debts due to and by, and claims against, the said first company mentioned in the preceding section shall be subject to the provisions contained in the thirtieth section of the fifty-sixth chapter, and the said company, notwithstanding its dissolution aforesaid, shall, as to said debts and claims, have the power and perform the duties prescribed by that section.

Exhibit "H."

WASHINGTON AND ALEXANDRIA RAILROAD Company *vs.* THE MAYOR AND CORPORATION OF WASHINGTON *et als.* } 56. Equity.

Filed September 12, 1863.

This indenture, made this fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-two, between Joseph B. Stewart, of the city of Washington, District of Columbia, of the one part, and Alexander Hay, of the city of Philadelphia, State of Pennsylvania, and Joseph Thornton, of Montreal, Canada, of the other part: Whereas, the Alexandria and Washington Railroad Company being duly incorporated by the State of Virginia, by order of its incorporators and directors, acting under its corporate authority and seal, through James S. French, the president of the same, executed a certain deed of trust, bearing date the sixteenth day of July, eighteen hundred and fifty-seven, recorded in the clerk's office of the county of Alexandria, State of Virginia, and in the clerk's office for the county of Washington, District of Columbia, did grant, bargain, sell, and convey to one Walter Lenox, of the said city of Washington, all and every part of their said railroad belonging to said company, lying and being partly in the county of Alexandria, State of Virginia, and partly in the city of Washington, District of Columbia, and extending from its terminus in the city of Alexandria to the depot of the Baltimore and Ohio Railroad

Company, in the city of Washington, and in the District aforesaid, together with all the franchises of said company, and all the property, rights and privileges of the company pertaining thereto, to have and to hold the same to the said Walter Lenox, or his successors in said deed of trust, and to his or their assigns forever, upon trust, however, for the following uses, intents and purposes, that is to say: the said company, by virtue of a certain act of the legislature of the State of Virginia, dated the twenty-seventh day of February, eighteen hundred and fifty-six, were authorized to sell their bonds, with coupons annexed, to the amount of one hundred thousand dollars, at a rate of interest not exceeding seven per cent., and whereas, at a general meeting of the stockholders of said company, held on the fifteenth day of July, eighteen hundred and fifty-seven, the president and directors of said company, under the authority of said act, were authorized and directed, at such time or times thereafter as they might deem expedient, to issue the bonds of said company, with coupons annexed, to the amount of one hundred thousand dollars, or such lesser portion thereof as they may deem proper, the interest to be at the rate of seven per cent. per annum, and to be paid semi-annually, in the city of New York, and did authorize the president and board of directors to execute said mortgage or deed of trust on the property and franchises of the said company, to secure the principal and interest of said bonds, and to sell the said bonds to raise money for the use of said company; and whereas, as the said president and directors, pursuant to the power and authority in them so vested as aforesaid, did cause to be executed the bonds of the said company bearing date on the twenty-second day of July, eighteen hundred and fifty-seven, which bonds were thirty in number, and were and are numbered from one to thirty, inclusive, being for the sum of one thousand dollars each, and amounting in the aggregate to thirty thousand dollars, and which bonds were so executed payable to Walter Lenox, or bearer, in the city of New York, on the twenty-second day of July, eighteen hundred and seventy-seven, with interest at seven per cent., payable simi-annually, on the twenty-second day of January, and on the twenty-second day of July, of each year, at the Bank of Commerce, in the city of New York, on the presentation and delivery of the interest coupons to said bonds annexed, signed by the treasurer of said company, which were so signed, and the payment of the said interest coupons, as well as the principal of the same, was to be secured by said deed of trust so executed as aforesaid, and, being so issued and secured, were, by the said president of the said railroad company, sold and delivered to Benjamin Thornton, of England, who was thereby lawfully invested with the fee-simple right to said thirty thousand dollars of bonds, and the interest thereon, at the rate of seven per cent. as aforesaid; and whereas it was stipulated, among other things, that in the event the said company should at any time fail to pay the interest on said bonds, so that there should be at any time six months' interest wholly due and unpaid, or in case of failure to pay the principal and interest of said bonds for the

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period of six months after the said bonds shall become due and
57 payable according to the tenor thereof, and payment to be demanded, then, or in either case, the said trustee, or his successor, were authorized, upon the request in writing of the holders of three-fifths of said bonds, to cause the said property and franchises of the said railroad company to be sold at public auction to the highest bidder, for ready money, in the city of Alexandria, after giving sixty days' notice of the time and place of sale, in newspapers published in each of the cities of Alexandria, Washington city, and the city of New York, and should convey the same to the purchaser or purchasers thereof, and apply the proceeds of such sale in the discharge of the principal and interest of said bonds; and whereas it was stipulated that in case of the death, incapacity, or resignation of the said Lenox, or of his successors in the said trust, that his place should be filled by an appointment to be made by any court of record of Alexandria county on the application of the holders of three-fifths of said bonds, and that notice of such application should be given to the president or one of the directors of said company, and that the trustee so appointed should exercise all the power and perform all the duties vested in said Lenox by virtue of said trust aforesaid; and whereas default was made by the said Alexandria and Washington Railroad Company in the payment of the semi-annual interest on said thirty thousand dollars of coupon bonds, though due, demand and application was made on the part of the holders of said coupons on or after the twenty-second day of January and twenty-second day of July, of the years eighteen hundred and fifty-eight, and eighteen hundred and fifty-nine, and eighteen hundred and sixty, and eighteen hundred and sixty-one, and until January, eighteen hundred and sixty-two, consecutively, at the Bank of Commerce, in the city of New York, the times and place designated in said deed of trust, for the payment of the said interest coupons; but the said coupons, nor any part of the same, or of the interest due thereon, was not paid or tendered then or subsequently by said railroad company, or by any one acting for or in their behalf, but, on the contrary, made default and failed to pay the said instalments of interest or any one of them; and whereas the said Walter Lenox, as trustee aforesaid, did become incapacitated for the performance of said trust, he having abandoned the same and removed from his said residence in the city of Washington, and is now engaged in acts of hostility against the government of the United States, it became necessary to fill the said trusteeship so made vacant, as provided in said deed of trust; and whereas Joseph Davison, of the city of Washington, the attorney-in-
fact and agent of the said Benjamin Thornton, and assigns,
58 and each and every of the said thirty thousand dollars of bonds and coupons thereto annexed, after seeking for said Lenox, as trustee aforesaid, and for James S. French, the president of said company, and for some one of the directors of the same, to whom to give notice, but was able to find no such person, did petition the honorable county court of the county of Alexandria, being a court of record, for the appointment of a trustee to fill the said trus-

teeship so made vacant, whereupon the said county court made the following order and appointment, to wit:

"At a term of the county court of Alexandria county, Virginia, held in the court-house of said county, this third day of February, the following order was entered as a part of the proceedings of the court:

"It appearing to the court, from sufficient evidence this day produced, that Walter Lenox, the trustee named in a certain deed of trust bearing date on the 16th day of July, 1857, executed by the Alexandria and Washington Railroad Company to the said Lenox for the security of $30,000 of the coupon bonds of the said company, and for other purposes therein mentioned, has become and is wholly incapacitated for executing the said trusts, or guarding the rights therein provided and created, the court is of the opinion, and so declares, that the trusteeship in said deed of trust has become vacant; and on the application of Joseph Davison, the attorney-in-fact of the holders of all the bonds in said deed of trust mentioned, the court doth appoint and substitute Joseph B. Stewart, of the city of Washington, as trustee in the place of the said Walter Lenox, and the said Stewart having this day accepted said trust in open court, he is substituted to all the rights, privileges, duties and responsibilities of the said Lenox, as trustee under and by virtue of said deed of trust.

"A true copy from the minutes.

"Given under my hand and seal of the County Court of Alexandria county, this 3d day of February, A. D. 1862.

"Teste:

"[SEAL.] (Signed) JEFFERSON TACEY, *Clerk.*"

And whereas the said Davisson, as attorney and agent aforesaid, did, as the representative of more than three-fifths of said bonds and of the coupons aforesaid, by his written order dated the fourth day of February, 1862, request the said Stewart, so appointed trustee as aforesaid, to proceed to advertise the said Alexandria and Washington railroad for sale, according to the terms, conditions and covenants of the said deed of trust, for the payment of said coupon bonds, and the interest so un-
59 paid and in arrears for more than six months. And whereas, I, Joseph B. Stewart aforesaid, as such trustee, did cause to be duly advertised for sale the whole of said Alexandria and Washington railroad, including the franchises, and all and singular the structure and property thereto belonging, (the engines, rolling stock and movable property all having been taken away by persons unknown,) which said advertisement was published and inserted for a period of sixty days previous to the tenth day of April, 1862, in the "Local News," a newspaper published in the city of Alexandria, the "National Intelligencer," a newspaper published in Washington city, and in the "New York Herald," a newspaper published in the city of New York, giving due notice of the time and place, and terms of sale, that is to say, the said sale to take place on the tenth day of April, 1862, at twelve o'clock meridian, in front of the mayor's office, in the

said city of Alexandria as aforesaid, all of which will more fully appear by reference to my report of sale dated the tenth day of April, after the same was consummated. And whereas, on the tenth day of April aforesaid, and pursuant to said sixty days' notice and advertisement as aforesaid, and at the time and place aforesaid, and in obedience to my duty and authority as trustee as aforesaid, and after publicly proclaiming my authority and purpose to sell said road, and exhibiting the order of the honorable County Court of the county of Alexandria aforesaid, appointing me such trustee, and otherwise making known the object and purpose of said sale, I did then and there publicly offer the said road, with its rights of way, estate, franchises and appurtenances, for sale to the highest bidder for ready money, and after crying the same upon several successive bids, it was struck off to Alexander Hay, of the city of Philadelphia, for the sum of twelve thousand five hundred dollars; and there being no further sum offered, after due warning, I declared the said sale and purchase concluded. And whereas the said Hay has assigned one-half of his said purchase to said Joseph Thornton, and requested that this conveyance shall be made accordingly; and whereas the said Hay and Thornton have notified me that, meaning to continue as a body corporate and politic in the exercise of all and singular the rights, privileges and franchises created and conferred by the charter of the said Alexandria and Washington Railroad Company, and have selected and so designated for the future name and style of the said corporation and company, so continued and renewed, that of "The Washington, Alexandria and Georgetown Railroad Company," and have further requested that this conveyance shall like wise operate as a conveyance in fee simple to the said company and body politic and corporate so named, the same is hereby accordingly done and concluded.

Now, therefore, this indenture witnesseth, that for and in consideration of the premises, and of the sum of twelve thousand five hundred dollars, to me in hand paid by the said Alexander Hay and the said Joseph Thornton, in the name and in behalf of the said Washington, Alexandria and Georgetown Railroad Company, I, the said Joseph B. Stewart, as trustee aforesaid, and by virtue of my authority in the premises mentioned, have granted, bargained, sold and conveyed, and by these presents do bargain, grant, sell and convey to the said Hay and Thornton, and to the said Washington, Alexandria and Georgetown Railroad Company, all the road, rights, ways and franchises of the said Alexandria and Washington Railroad Company, and all and singular the estate, material and effects of the same, whether real or personal, embraced in and about said road from its terminus in the city of Alexandria, Virginia, to the Baltimore and Ohio railroad depot, in the city of Washington; to have and to hold to them, the said Hay and Thornton, and to the said Washington, Alexandria and Georgetown Railroad Company, in fee simple, and forever.

In testimony whereof I, the said Joseph B. Stewart, as trustee

aforesaid, have hereunto affixed my hand and seal the day and year first above written.

[L. S.] JOSEPH B. STEWART, *Trustee.*

Signed sealed and delivered in presence of—
THOMAS C. DONN.
F. I. MURPHEY.

STATE OF VIRGINIA, *County of Alexandria, to wit:*

I, Robert Bell, a justice of the peace for the county aforesaid, in the State of Virginia, do certify that Joseph B. Stewart, trustee, whose name is signed to the writing hereto annexed, bearing date on the fourteenth day of April, 1862, has acknowledged the same before me in my county aforesaid.

Given under my hand this second day of May, in the year 1862.

ROBERT BELL, *J. P.*

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

We, Thomas C. Donn and Francis I. Murphey, justices of
61 the peace in and for said county and district aforesaid, do hereby certify that Joseph B. Stewart, party grantor to the foregoing and annexed deed or instrument in writing, bearing date the fourteenth day of April, 1862, personally appeared before us in our county aforesaid, the said Joseph B. Stewart, being personally well known to us as the person who executed said deed, and acknowledged the same to be his act and deed for the purposes therein expressed.

Given under our hands and sea lsthis 2d day of May, 1862.

[SEAL.] THOMAS C. DONN, *J. P.*
[SEAL.] F. I. MURPHEY, *J. P.*

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
May 3d, 1862.

This deed was received in the office, and having been acknowledged before justices, admitted to record.

Teste:

JEFFERSON TACEY, *Clerk.*

Endorsements.

Joseph B. Stewart, trustee to Alexander Hay, Joseph Thornton and the Washington, Alexander and Georgetown Railroad Co. Deed.

1862. May 3d. Received in the office and having been acknowledged before justices, admitted of record.

Teste :

J. TACEY. *Clerk.*

Recorded Liber "V," No. 3, page 62, and examined, &c.

J. TACEY, *Clerk.*

Joseph B. Stewart, trustee to Alexander Hay, Joseph Thornton and the Washington, Alexandria and Georgetown Railroad Co. Deed.

Received 10th May, 1862, to be recorded, and the same day was recorded in Liber J. A. S. No. 218, folios 175, 176, 177, 178, 179, 180 and 181, one of the land records for Washington county, in the District of Columbia, and examined by

JNO. A. SMITH, *Clerk.*

62 *Exhibit "A."—Washington, Alexandria and Georgetown Railroad Company.*

WASHINGTON, *May* 3, 1862.

Corporators' and stockholders' meeting of the Washington, Alexandria and Georgetown Railroad Company, for organization and other purposes.

At a meeting of the corporators and stockholders of the Washington, Alexandria and Georgetown Railroad Company, convened this 3d day of March, 1862, pursuant to previous notice, the same being a corporation formed and continued under a charter of the late Alexandria and Washington Railroad Company, by virtue of the purchase of the franchises, estate, rights, property and effects of the same, on the 10th day of April, 1862, in the city of Alexandria, at a trustee's sale, as by previous advertisement thereunto notified, and purchased by Alexander Hay and Joseph Thornton, for themselves and assigns, and the said corporators and stockholders having so met and organized, it was among other things—

Resolved, 1st. That the name and style of the corporation now formed in the continuance of the exercise of the franchises, rights and privileges of the charter of the late Alexandria and Washington Railroad Company shall be and is the Washington, Alexandria and Georgetown Railroad Company.

2d. That for the future regulation and government of the said company, till otherwise ordered, the following by-laws and regulations are proposed, to wit:

By-laws and regulations of the Washington, Alexandria and Georgetown Railroad Company.

ARTICLE I.

The name and style of this company shall be and is hereby designated "The Washington, Alexandria and Georgetown Railroad Company."

ARTICLE II.

The objects and uses of this company are and shall be the transit of passengers and freight over their said road, as now constructed or hereafter extended, subject to such general regulations as hereinafter provided.

ARTICLE III.

The said company shall be managed by a board of five directors, to be annually elected from among the stockholders, each share of stock being counted as one vote, and a majority of said shares
63 shall be requisite to the election of any director, which may be cast in person or by proxy.

ARTICLE IV.

The said board of directors shall exercise general legislative power over all matters appertaining to the affars of said company, a majority of whom shall constitute a business quorum, and shall hold their offices until successors be elected. And said board of directors shall designate and agree upon a form of stock or certificate of shares and bonds, which shall be signed by the president and secretary, and countersigned by the treasurer. They shall also agree upon the form and device of a common seal, which when adopted shall not be altered, except by a vote of a majority of the stockholders, and shall fix upon the time and place for holding elections of directors and other purposes.

ARTICLE V.

The board of directors shall elect from among their number a president, secretary and treasurer, no two of which offices shall be filled by the same person: and the board may appoint a chief engineer and general superintendent, both of which offices may be held by the same person if deemed desirable.

ARTICLE VI.

It shall be the duty of the president, in addition to his duties as a director to preside at the meeting of the board: to see to the execution of its ordinances and regulations, and supervise the business affairs of said road. He shall make all contracts of purchase or sale, by and with the advice of the directors, or a majority of the same; but no contract shall be made involving the franchise of said road, except the same be approved by a general meeting representing a majority of the stock, after being recommended by a majority of the stockholders.

ARTICLE VII.

The secretary shall keep a correct minute and record of the meetings, general and special, of the directors or stockholders of said company, showing all matters proposed or acted upon, and the votes had or taken upon the same; also a journal of the current transactions and a book of correspondence, and a proper book of receipts and disbursements of said road, as reported by the president and treasurer, and also an inventory of all the property, real and personal, and running stock and material belonging to said road. He shall also have the charge and custody of the stock and transfer books,

64 and also of the seal of the company, except when he is absent, and then he shall leave them in charge either of the president or treasurer.

ARTICLE VIII.

The treasurer shall have charge of all moneys and effects belonging to said road; also the amount of stock issued and by whom held, and shall report once a month, unless otherwise ordered, the amount of money received and paid out, and the balance on hand; and no money shall be paid out except upon the written order or endorsement of the president or person acting as such for the time being; and all moneys received, paid, or owed by the company shall be reported from time to time to the secretary and be registered as aforesaid.

ARTICLE IX.

In the election of officers, the vote shall be by ballot, with the name and amount of stock represented by each party voting, which shall be kept on file in the archives of said company.

ARTICLE X.

The first proceeds and earnings of said company shall be applied to the payment of its debts and liabilities, unless there be an apparent surplus, when a dividend may be declared semi-annually, to be determined by the board of directors.

ARTICLE XI.

All matters of construction, reconstruction, and addition to said road shall be adopted and ordered by the president with the approval of the directors or a majority of the same; and the same shall be carried out and executed by the chief engineer and general superintendent, who shall also, under the general direction of the president, have charge of the working operations of the road, together with the employment of such agents, attendants and laborers as may be deemed necessary for the proper working of the road.

ARTICLE XII.

The capital stock of this company shall be three hundred thousand dollars. All stock shall be transferred on the books of the company in person or by power of attorney; but no stockholder shall transfer his stock who is in arrears to the company, unless by the consent of the board of directors.

ARTICLE XIII.

All moneys belonging to said company shall be deposited in some safe bank to the credit of the company, and shall only be drawn out upon the check or order of the treasurer, countersigned by the president.

65 ARTICLE XIV.

In the absence or disability of the president, the board shall elect a president pro tempore.

ARTICLE XV.

If from any cause any officer of said company shall be deemed ineligible, or fail in the discharge of his duties to the company, his place may be declared vacant, and be filled by a majority of the directors; and in case of the death or resignation of any director, his place shall be filled by an appointment by the board of directors.

ARTICLE XVI.

Monthly meetings of directors shall be held at the office of the company, in the city of Washington, at 12 o'clock, on the first Saturday of each month, until otherwise ordered; and special meetings shall be called by the secretary at any time, upon the application of two or more directors.

ARTICLE XVII.

The annual meetings of the board of directors shall be held on the first Saturday in May, until otherwise ordered.

ARTICLE XVIII.

These by-laws and regulations may be altered or amended by an affirmative vote at any regular meeting of directors, and the approval of the board at their next regular meeting.

The foregoing by-laws and regulations having been read by sections, from one to eighteen, inclusive, are adopted, and declared to be the permanent organization of said company, by a vote of 3,000 shares, being the total capital stock, and all being represented.

The stockholders then proceeded to the election of five directors, to hold their office for the current year, or until their successors be chosen; whereupon the following persons were elected:

Alexander Hay	3,000	votes.
Joseph Thornton	3,000	do.
Horace H. Day	3,000	do.
Silas Seymour	3,000	do.
Joseph B. Stewart	3,000	do.

On motion, adjourned sine die.

66 *Meeting of directors.*

WASHINGTON, *May* 10, 1862.

The said board of directors being so elected, and having notified their acceptance of the office of directors of said company for the current year, it was, upon motion—

Resolved, That the said board organize for the election of officers.

Whereupon the following officers were elected:

President, Alexander Hay; secretary, Joseph B. Stewart; treasurer, Joseph Thornton.

The foregoing officers so elected having signified their acceptance of the office so conferred, it was

Resolved to appoint a general superintendent, manager and chief engineer of said company for one year, to date from the 12th day of April, 1862.

Whereupon Silas Seymour, esq., of New York, was nominated and appointed chief engineer and general superintendent of the Washington, Alexandria and Georgetown Railroad Company, to date from the 12th day of April, 1862, at a salary of $3,000 per year.

On signifying his acceptance of the office, Mr. Seymour made a written communication to the president and directors, which being read, was approved and ordered to be placed on file.

Upon the recommendation of the chief engineer, it was

Resolved, That a survey, map and profile be made of the entire road, together with a branch from the south end of the Long bridge to the Georgetown aqueduct, and a branch to connect with the Loudon and Hampshire railroad; that the sum of five hundred dollars be appropriated for that purpose.

The president presented the following seal as the corporate seal and official insignia of the Washington, Alexandria and Georgetown Railroad Company:

[SEAL.]

Which, after inspection, was adopted.

On motion, the meeting adjourned to meet on the first Saturday in June.

ALEXANDER HAY,
President.
JOSEPH B. STEWART,
Secretary.

67 ***Exhibit B, No. 2.—The claim of the corporation upon the Washington and Alexandria railroad.***

To the board of common council:

Your committee, to whom was referred the following resolution and communication of the mayor, viz:

"Be it enacted, &c., That the communication of July 21st, from the mayor, relative to the sale of certain rails, &c., &c., belonging to the Washington and Alexandria railroad, be referred to a select committee of three members, who shall examine into the subject and report to this board all the facts connected with the claim of this corporation upon said road, the nature and legality of such claim, with such recommendations as they may offer as to the best and most effectual mode of protecting the interests of this corporation, and of

recovering the amount held by the parties referred to in said mayor's communication.

"MAYOR'S OFFICE, *July* 21, 1868.

"To the board of common council:

"GENTLEMEN: In reply to the resolution of the board of common council of the 14th instant, in relation to the Washington and Alexandria Railroad Company, I respectfully state that the loose rail were gathered together and sold in Alexandria at public auction by Joseph B. Stewart, substituted trustee under a deed of trust subsequent to the lien of the corporation of Washington, and realized nearly four thousand dollars. Some time since I, in writing, requested Mr. Stewart to pay over the amount to the corporation, but as yet have received no reply.

"Very respectfully,

"RICHARD WALLACH, *Mayor.*"

Respectfully report that they have examined the subject as thoroughly as circumstances permitted, and give the following result of their labors:

In order that the history of the transaction may be full enough to render it thoroughly intelligible, they give a copy of the charter of the company, the proceedings of the board of aldermen and council at the time of the guarantee and the subsequent legislation, &c., taken from the journals of the respective boards.

Charter of the company.—Chapter LXIII.

68 AN ACT to incorporate a company to construct, on the plan of James S. French, a railroad between Alexandria and Washington city. (Passed February 27, 1854.)

1. Be it enacted by the general assembly, That it shall be lawful to open books of subscription at the city of Alexandria, under the direction of James S. French, John W. Maury, A. J. Marshall, Cornelius Boyle, George French, Edgar Snowden and R. W. Latham, or any two of them, and at such other places under the direction of such agents as a majority of the above-named commissioners may appoint, for the purpose of receiving subscriptions to an amount not exceeding three hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock for constructing and operating a railroad, on the plan of James S. French, as set forth in the report of the committee of the house of delegates, document No. 65, session 1850–51, from the city of Alexandria, in the State of Virginia, to the city of Washington, in the District of Columbia, crossing the Potomac at some eligible point between the two cities.

2. Whenever two thousand shares shall have been subscribed, the subscribers, their executors and assigns, shall be and are hereby declared and constituted a body politic and corporate, under the name and style of "The Alexandria and Washington Railroad Company," and shall be subject to all the provisions of the code of Virginia applicable thereto.

3. Provided, That it shall not be lawful for said company to connect with any other railroad terminating within the corporate limits of the city of Alexandria, without the consent of the city councils thereof: and further, that the said company shall not permit the said road to pass into the exclusive possession of any corporation without the limits of the Commonwealth of Virginia: and provided further, that the said road shall be finished within five years from the commencement of the work.

4. This act shall be in force from its passage, and the term of two years shall be allowed to commence the road.

Proceedings in the common council, January 2, 1855.

Mr. Bamberger presented the petition of the Washington and Alexandria Railroad Company, accompanied by the following resolution, which was adopted:

Resolved, &c., That a joint committee of one from each ward, in conjunction with the mayor, be appointed to consider the memorial of the Washington and Alexandria Railroad Company.

In pursuance of the above resolution, the president ap-
69 pointed Messrs. Barr, Clements, Stewart and Bamberger the joint committee on the part of this board.

Proceedings in Board of Aldermen, January 2, 1855.

The resolution from the board of common council entitled "Joint resolution in reference to the memorial of the Washington and Alexdria Railroad Company," was taken up, read three times and adopted, and Messrs. Magruder, Evans and Houston were appointed the committee on the part of this board.

Proceedings in Common Council, January 22, 1855.

Mr. Clements, from the special committee to which the subject was referred, made an unanimous report in favor of the bill in relation to the Washington and Alexandria railroad.

Mr. Smoot moved to postpone the further consideration of the bill for two weeks, and that it be printed for the use of the members of the board.

Mr. Clements moved to amend the motion by postponing and making it the special order for the next session of the board.

The previous question was then moved and sustained.

The question was then taken on Mr. Clements' amendment to the proposition of Mr. Smoot by yeas and nays, and decided in the negative, as follows:

Yeas—Messrs. Newman, Kelly, Smoot, J. W. Davis, Duncanson, Cross and Stewart—7.

Nays—Messrs. Barr, Plant, Donn, Walker, Ball, Clements, Busey, Killmon, Ruff, Smith, Bamberger, Gill and Davis, (president)—13.

The question was then taken on Mr. Smoot's motion to postpone the consideration of the bill for two weeks; and it was disagreed to.

The question now being on the third reading of the bill—

Mr. Clements moved the previous question, which was sustained.

On the third reading of the bill the yeas and nays were demanded, and being taken, it was decided in the affirmative, as follows:

Yeas—Messrs. Barr, Plant, Walker, Ball, Clements, Busey, Killmon, Cross, Ruff, Stewart, Smith, Gill and Davis, (president)—13.

Nays—Messrs. Newman, Kelly, Smoot, Donn, J. W. Davis, Dunnington and Bamberger—7.

Mr. J. W. Davis raised a question of order whether, under the rule, it did not require a two-thirds vote on the third reading of the bill.

70 The chair (the vice-president occupying it) decided in favor of the point of order raised by Mr. J. W. Davis.

On this decision an appeal was taken; and the yeas and nays being demanded on the appeal, the decision of the chair was not sustained, by the following vote:

Yeas—Messrs. Newman, Kelly, Smoot, Donn, J. W. Davis, Duncanson, Cross, Stewart and Bamberger—9.

Nays—Messrs. Plant, Walker, Ball, Clements, Busey, Killmon, Ruff, Smith and Gill—9.

The question then being on the passage of the bill—

The yeas and nays were demanded, and it was decided by the following vote:

Yeas—Messrs. Barr, Plant, Walker, Ball, Clements, Busey, Killmon, Cross, Ruff, Stewart, Gill, Smith, and Davis, (president)—13.

Nays—Messrs. Newman, Kelly, Smoot, Donn, J. W. Davis, Duncanson and Bamberger—7.

So the bill was read three times and passed.

Proceedings in Board of Aldermen, January 29, 1855.

The bill from the board of common council entitled "An act in relation to the Washington and Alexandria railroad," was taken up, read twice and amended.

Mr. Hill then moved that it be referred to the committee on finance, with the following instructions:

Resolved, That the bill authorizing a subscription by the corporation of Washington in aid of the Alexandria and Washington Railroad Company be referred to the committee on finance and be printed, and that the said committee be instructed to inquire whether the provisions of the act of the Virginia legislature incorporating said company, and if the general railroad law of the State have been complied with so as to constitute the said company a body politic and corporate; and that they inquire also into the contemplated mode of operating said road, and between what points on the Potomac the proposed ferry for crossing the river is to be made; and that they report by bill or otherwise.

And the question being taken by yeas and nays, it was decided in the negative, as follows:

Yeas—Messrs. Dove, Burrows and Hill—3.

Nays—Messrs. Reed, Bayly, Evans, Pepper, Fitzpatrick, Houston, Clarke, Marks, Johnson and Pearson—10.

The bill was then read the third time as amended and passed.

Proceedings in Common Council, January 29, 1855.

The bill in relation to the Washington and Alexandria rail-
71 road, returned from the board of aldermen with an amendment, was next taken up for consideration.

Mr. Walker moved the previous question, which was sustained.

The question was then taken on concurring in the amendment of the board of aldermen, which was agreed to.

Copy of an act resulting in the above proceedings.

AN ACT in relation to the Washington and Alexandria railroad.

Be it enacted by the board of aldermen and board of common council of the city of Washington, That for the purpose of aiding the Washington and Alexandria Railroad Company in the construction and equipment of a railroad from Alexandria, in the State of Virginia, by the shortest practicable route to some convenient point in the city of Washington, for connecting with the depot of the Baltimore and Ohio railroad, the corporation of the city of Washington agrees to guaranty the certificates of said company to the amount of sixty thousand dollars, bearing interest at the rate of six per cent. per annum, payable half yearly, and inssuable in sums of not less than five hundred dollars, the said certificates payable in ten annual instalments of six thousand dollars each, commencing on the first day of January, eighteen hundred and fifty-eight, which said guarantee to the amount aforesaid shall be discharged and satisfied out of the ordinary revenues of this corporation within ten days from the maturing of said certificates respectively, and upon the surrender thereof to this corporation, and which said guarantee shall be evidenced by the certificates of the mayor, countersigned by the register, to be endorsed as such certificates to the amount aforesaid, to the effect that the same are guarantied as aforesaid: Provided always, That the said company shall first execute an assignment to this corporation of all its rights, immunities, and property as a security for the punctual payment of the interest and principal of said certificates; and further, that the said company shall give such other security for the payment of said interest as shall be satisfactory to the committee hereinafter appointed, which said assignment and security shall enure to the benefit of the holders of said certificates: Provided further, That the assent of this corporation shall be first obtained to any other connection with said road than hereinafter provided for.

SEC. 2. And be it further enacted, That the mayor, and one member from each board, to be selected by the presiding officer thereof,

be appointed a committee, under whose direction the said
72 certificates shall be issued, and the same, or the proceeds thereof, be applied exclusively to making of said road: Provided further, That said committee shall be satisfied that the certificates above guarantied will insure the completion and equipment of said road.

A. McD. DAVIS,
President of the Board of Common Council.
SILAS H. HILL,
President of the Board of Aldermen.

Approved February 8, 1855.

JNO. T. TOWERS, *Mayor.*

Mr. John H. Houston, of the board of aldermen, and Mr. John P. Clements, of the board of common council, were appointed a joint committee in pursuance of the above second section.

It will be perceived that the above bill was, in the lower board, put through on the night of its introduction, in direct violation of the rules of the board, and also in direct violation of the parliamentary law, under which the decisions of a presiding officer are held to be sustained unless reversed by a majority vote—the whole proceeding showing a degree of haste somewhat remarkable when we consider the amount involved was some $78,000; while in the upper board a resolution of inquiry as to the genuineness of said company (submitted by the lamented Silas Hill) was promptly stifled, three members only voting for it.

Proceedings of committee under the above act.

MAYOR'S OFFICE, *April* 11, 1855.

At the request of the Washington and Alexandria Company, the committee appointed on the part of the corporation under the act entitled "An act in relation to the Washington and Alexandria Railroad Company," consisting of the mayor and Jno. H. Houston, of the board of aldermen, and J. T. Clements, of the board of common council, met at the mayor's office this day at 5 o'clock, for the purpose of a free interchange of ideas and opinions in reference to the affairs of the said company, and also to a proper execution of the law above alluded to in reference to the guarantee of the bonds of the said company. After deliberation the committee adjourned until tomorrow at 5 p. m.

73 THURSDAY, *April* 12, 1855.

The committee met; all present. A communication was received from the Washington and Alexandria Railroad Company, communicating a statement of the affairs of the said company, and requesting said committee to execute said law, which communication is on file, marked A. [This paper does not appear of record.]

On motion, ordered that the mayor and register be requested to

guaranty the bonds of the said Alexandria and Washington Railroad Company loan, amount not to exceed $18,000, in pursuance of the law in relation thereto.

On motion, ordered that the mayor be requested to confer with the attorney of this corporation, and inquire whether the deed of trust proposed to be given by said company to secure the reimbursement of said guarantee is in compliance with the law upon the subject.

On motion, it was ordered that the mayor be requested to require of said company good and sufficient security for the payment of the interest which may accrue on said guarantied bonds, at least ten days before the period may be fixed for the semi-annual payment thereof.

On motion, it was ordered that the first day of July and the first day of January in each and every year be fixed as the period for the payment of the interest which may be due on said guarantied bonds.

On motion, it was ordered that the said guarantied bonds, or the proceeds thereof, be deposited to the joint credit of the mayor of Washington and the treasurer of said Alexandria and Washington Railroad Company.

On motion, ordered that no portion of said guarantied bonds, or the proceeds thereof, shall be applied or paid except by the written order of a majority of this committee.

MONDAY, *April* 16, 1855.

The committee met; all present. The Alexandria and Washington Railroad Company applied this day for an issue of endorsed certificates of $25,000, instead of $18,000 ordered on the 12th instant.

The mayor suggested that before issuing the endorsed certificates for that amount additional guarantee or security or evidence should be required that the $60,000 would be sufficient to ensure the completion and equipment of the road, according to the proviso of the bill.

It was then ordered that the deed of trust be so amended as to give the trustees the power of foreclosing the same (if the
74 committee should deem proper) if the road should not be put in good running order by the first January, 1856, that, with the evidence of ability to complete the work heretofore submitted, being deemed a sufficient compliance with the law.

The mayor stated that he still adhered to the conclusion which he had just stated to the committee, and that in his opinion the committee should have the evidence of the ability of the company to complete and equip the route by prima facie evidence of credits or cash to a sufficient amount.

It was then ordered that the sum of $25,000 of the certificates of the company be endorsed, as provided for by law, instead of the $18,000 ordered on the 12th instant—Messrs. Houston and Clements voting in the affirmative.

THURSDAY, *May* 31, 1855.

The committee met; all present. The Alexandria and Washington Railroad Company, through their president, made an application

for the endorsement and delivery of $13,000 of bonds of said company, in pursuance of the law on the subject, to be deposited with Riggs & Co., as the former bonds were. Which were ordered to be issued.

SATURDAY, *June* 30, 1855.

The committee met; all present. The Alexandria and Washington Railroad Company, through their president, made an application for the endorsement and delivery of $7,000 of bonds of said company, in pursuance of the law on the subject, to be deposited with Riggs & Co., as the former bonds were. Which were ordered to be issued.

FRIDAY, *July*, 13, 1855.

The committee met; present, the mayor and Mr. Clements. The Washington and Alexandria Railroad Company, through their president, made application for the endorsement and delivery of $2,000 of the bonds of said company, in pursuance with the law, to be deposited and drawn as the former bonds have been. Which were ordered to be issued—Mr. Houston consenting.

WEDNESDAY, *July* 25, 1855.

The committee met; present, the mayor and Mr. Clements. The Alexandria and Washington Railroad Company, through their
75 president, made application for the endorsement and delivery of $8,000 of the bonds of said company, in pursuance with the law, to be deposited and drawn as the former bonds have been. Which were ordered to be issued—Mr. Houston consenting.

THURSDAY, *September* 27, 1855.

The committee met; all present. The Alexandria and Washington Railroad Company, through their president, made application for the endorsement and delivery of the remainder [$5,000] of the bonds of said company, in pursuance with the law, to be deposited and drawn as the former bonds have been. Which were ordered to be issued—Mr. Houston consenting.

The second section of the act under which the above committee were appointed says in the latter clause: Provided further, That said committee shall be satisfied that the certificates above guarantied will insure the completion and equipment of the road.

This clause was a nullity so far as the committee were concerned, as the assets so far as known consisted of the following subscriptions to the $300,000 capital stock required under the charter first recited:

James S. French	$100,000
Walter Lenox	50,000
George French	50,000

Of the above parties the first was president, the second treasurer of the road, and as facts indicate comprehended the entire company known as the Washington and Alexandria Railroad Company.

Your committee do not think that the action of this committee exhibited a proper appreciation of the important trust confided to them. These facts were so notorious that it seems strange that an attempt at such a guarantee could be made, or that any money lender would advance upon such insufficient and illegal security, for section ten of this city's charter—as follows: "The corporation shall not have power to increase the present funded debt of the said corporation, either by borrowing money, or otherwise, unless it shall be agreed to do so by two-thirds of the legal voters in the said city at an annual election"—expressly forbids such an increase of the city's debt, and is conclusive upon the point, viz., that the councils had no right to make such a guarantee, and that, consequently, the loan was in direct violation of law, and, with this knowledge before them, the
76 parties loaning the money must have been deeply interested beforehand by advances made, or have been blind to their own interests in investing so heavily upon such doubtful security.

Copies of bonds and certificates.

We give below copies of the bonds and certificates referred to in the above :

Copy of bond No. 10.

[1,000] DISTRICT OF COLUMBIA. [No. 10]

The Alexandria and Washington Railroad Company acknowledge themselves to be indebted to ————————, or the holder hereof, in the sum of one thousand dollars, current money of the United States, payable at the banking house of Riggs & Co., in the city of Washington, on the first day of January, in the year eighteen hundred and fifty-nine, with interest thereon at the rate of six per cent. per annum, semi-annually, on the first day of July and the first day of January ensuing the date hereof, until the said principal sum shall be paid.

This certificate, and all rights and benefits arising therefrom, transferable by general or special endorsement, or by delivery.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by the president and treasurer, this eighteenth day of April, eighteen hundred and fifty-five.

JAS. S. FRENCH, *President.*
WALTER LENOX, *Treasurer.*

Copy of certificate bond No. 10.

MAYOR'S OFFICE, CITY OF WASHINGTON,
April 18, 1855.

Be it known that it is hereby certified, in pursuance of the act of this corporation passed the 8th day of February, 1855, that the fore-

going certificate No. 10, for $1,000, issued by the Alexandria and Washington Railroad Company, is guarantied by this corporation, and that the same will be discharged and satisfied by this corporation out of the ordinary revenues thereof within ten days from the maturity of said certificate, and after the surrender thereof to this corporation, and that the payment of the interest of said certificate semi-annually, according to the tenor thereof, is also herein guarantied by this corporation.

JNO. T. TOWERS, *Mayor.*
WM. McCORMICK *Register.*

77 *The deed of trust given to the city.*

The following is the deed of trust given to secure the city in the guarantee above referred to. This instrument was referred (at the time of its execution) to Mr. J. H. Bradley, the law officer of the corporation, for his opinion as to whether it was in due form of law, to which he gave an affirmative reply. This deed, by neglect, was not recorded until some two years thereafter. Meanwhile another deed of trust was given to Fowle & Snowden, of Alexandria, to secure a debt due them, which was recorded before the city's deed. In the suit which occurred this deed was overruled by that of the city, from some omission in the wording as to the locality. An appeal was taken, but the case has never been decided.

Assignment.—Alexandria and Washington Railroad Company to Joseph H. and A. Thomas Bradley.

Recorded 26th April, 1855, in Liber J. A. S., No. 96, folios 367, 368, 369, 370, and 371.

This indenture, made this 19th day of April, in the year of our Lord eighteen hundred and fifty-five, between the "Alexandria and Washington Railroad Company," a corporation duly constituted by the laws of the State of "Virginia," of the first part, and Joseph H. Bradley and A. Thomas Bradley, of the city of Washington, of the second part, witnesseth:

That, whereas the said parties of the first part are engaged in constructing a railroad from the city of Washington to the town of Alexandria, in the State of Virginia; and whereas, for the purpose of aiding said company in the construction and equipment of said road, the corporation of the city of Washington, by their certain act entitled "An act in relation to the Alexandria and Washington railroad," approved February 8, 1855, agreed to guaranty the certificates of said company to the amount of sixty thousand dollars, bearing interest at the rate of six per centum per annum, payable half yearly, and issuable in sums of not less than five hundred dollars each, the said certificates payable in ten annual instalments of six thousand dollars each, commencing on the 1st day of January, 1858, signed by the mayor, and countersigned by the register of said corporation, to the effect aforesaid, upon certain terms and conditions,

as by reference to said act will more fully appear, special
78 reference being had herein to said act, as a part of these presents; and whereas, the said party of the first part are desirous that the said certificates, guarantied as aforesaid, shall be issued from time to time, as the wants of said company may require, and with the aid aforesaid have undertaken to complete and equip said road by the first day of December next ensuing, and in conformity with the provisions of said act, for the securing of the payment of said certificates and the interest thereon, as the same respectively from time to time become due and payable, and for the purpose of protecting the said corporation of Washington against all default in fulfilment of said undertaking to complete and equip said road by the first day of December next, the said parties of the first part agree to execute these presents.

Now, therefore, this indenture witnesseth that the said parties of the first part, in consideration of the premises, and of the sum of one silver dollar to them in hand paid at the sealing and delivery hereof, by the said parties of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer and convey to the said parties of the second part, their heirs, executors, administrators and assigns, and the survivor of them, his heirs, executors, administrators and assigns, all the following present and hereafter acquired property of the said parties of the first part, that is to say, their road, made or to be made, including the right of way and land occupied thereby, together with the superstructures and tracks thereon, and all rails and other materials used thereon or procured therefor, including the iron rails and other materials used thereon or procured therefor, including the iron rails and other materials purchased, or to be purchased, for the construction of said road, or paid for by the above described certificates, or the money obtained therefor, or with any other moneys received by them; all bridges, viaducts, culverts, fences, depot grounds and buildings thereon, engines, tenders, cars, tools, materials, contracts and all other personal property now owned or hereafter to be acquired, right thereto or interest therein; and all rights, immunities and franchises of the said parties of the first part in, to, or concerning the same.

To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said parties of the second part, their heirs, executors, administrators and assigns, and the survivor of them, his heirs, administrators and assigns, upon the following trusts, that is to say: that in case the said parties of the first part shall fail to pay the principal of said certificates, or any part thereof, or the interest, or any part of the same, at any time when the same may become due and payable, according to the tenor thereof,
79 when demanded, or shall fail to complete and equip the said road by the time aforesaid, then, in any such case, upon the request of the corporation of the city of Washington, expressed through its councils or chief magistrate, or upon the request of the holder of such certificate or certificates of which the principal or the

interest thereon may be due and payable, that the trustee or trustees shall forthwith enter into and take possession of all of the said premises, and dispose of the same, or so much and such parts thereof, at public auction or at private sale, and upon such terms of payment of the purchase money and security therefor as in the said particulars they or he shall deem best for the rights and interests of all parties, first giving thirty days' notice of the time, place and terms of said sale by publishing the same in two of the principal newspapers printed and published in the city of Washington and town of Alexandria aforesaid, and, upon a full compliance with the terms of sale, the trustees shall execute to the purchaser or purchasers thereat a sufficient assignment of the machinery and personalty, and deed of conveyance in fee simple for the said premises; and after deducting from the proceeds of sale the costs and expenses thereof, including a reasonable commission for his or their trouble and responsibility, apply so much thereof as may be necessary to satisfy and discharge equally the principal and interest of all said certificates issued and guarantied as aforesaid by the "corporation of Washington" which may be then unpaid, with all costs thereon, whether all said certificates shall have matured or not, and without regard to date of issue, and the balance pay over to the said parties of the first part.

And the said parties, for themselves, their successors and assigns, do hereby covenant, for the consideration aforesaid, from time to time, and as often as the same may become necessary from the change or acquisition of property, to execute and deliver any further reasonable and necessary conveyance of the premises, or any part thereof, to the said parties of the second part, as shall from time to time be necessary, and the said trustees or trustee, or the counsel of the said corporation of Washington, shall reasonably advise or require for the better securing the objects and purposes of these presents, and of embracing within the terms of this trust the said railroad, as the same may be extended or constructed, and the property and effects so expressed to be mortgaged or so intended to be hereafter acquired.

86 In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president; and the said parties of the second part have hereunto set their hand and seal the day and year first above written.

JAMES S. FRENCH,
President of Alexandria and Washington Railroad Company.

[Seal of Alexandria and Washington Railroad Company.]

[SEAL.] JOS. H. BRADLEY.
[SEAL.] A. THOS. BRADLEY.

Signed, sealed, and delivered in presence of—
J. H. GODDARD.
T. C. DONN.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

We, J. H. Goddard and Thomas C. Donn, justices of the peace in and for the county aforesaid, do hereby certify that James S. French, party to a certain deed dated the 19th day of April, 1858, and hereunto annexed, personally appeared before us, in our county aforesaid, the said James S. French, being well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 19th day of April, in the year of our Lord 1858.

[SEAL.] J. H. GODDARD, *J. P.*
[SEAL.] T. C. DONN, *J. P.*

Test:

JOHN A. SMITH, *Clerk.*

No part of the certificates so issued in the name of the railroad company were paid by its president, and the next notice we have of this matter is the following letter from the mayor, which explains itself:

"MAYOR'S OFFICE,
"*Washington, January* 4, 1858.

"To the Board of Aldermen and Board of Common Council:

"GENTLEMEN: I have been authentically notified that the six thousand dollars of the bonds of the Alexandria and Washington railroad, guarantied by this corporation, and due on the 1st
81 instant, have not been redeemed, and that no provision has been made by that company for the payment of six months' interest on the whole amount of that guarantee due on the 31st ultimo, ($60,000,) being eighteen hundred dollars.

"I have communicated with a legal gentleman in Alexandria, asking him to look to the interest of this corporation involved in that road, and to report the wole matter to me, and will communicate his answer to you as soon as practicable.

"Respectfully,

"W. B. MAGRUDER, *Mayor.*"

The next feature of this affair is the passage of a resolution to pay the amount due, and a second stifling of a resolution of inquiry submitted by Alderman Moore, of the fourth ward. This disposition to evade inquiry or investigation is another of the remarkable features noticeable in this connection. We quote from the journal of the proceedings of the board of aldermen, as follows:

WASHINGTON, *Monday, January* 11, 1858.

Mr. Houston reported a joint resolution to provide for the payment of certain bonds, which having been read twice—

Mr. Moore moved to refer it to a select committee to investigate

and report to this board the circumstances under which this corporation became to any extent liable for the debts of the Washington and Alexandria Railroad Company, how far it is so liable and what security this corporation has for the repayment of the whole or any part of this indebtedness of some eighty thousand dollars, in which it would appear this corporation has become involved.

And the question on the said motion was determined in the negative, as follows:

Yeas—Messrs. Goddard, Moore, Ruff and Bayly—4.

Nays—Messrs. Barry, Clark, Dove, Donoho, Evans, Houston, Miller, Pearson and Smith—9.

(Mr. Riggs declined voting, for the reason that he was interested in the passage of the bill.)

The question was then on the third reading of the bill, and it was carried in the affirmative:

Yeas—Messrs. Barry, Clark, Dove, Donoho, Evans, Goddard, Houston, Miller, Pearson, Ruff, Smith and Bayly—12.

Nay—Mr. Moore.

(Mr. Riggs declined voting for the reasons above stated.)

The bill was accordingly read the third time and passed.

The bill is in the following words:

82 JOINT RESOLUTION to provide for the payment of certain bonds.

Whereas the interest due on the first of January, eighteen hundred and fifty-eight, on bonds of the Alexandria and Washington Railroad Company, guarantied by this corporation under the act passed the eighth of February, eighteen hundred and fifty-five, and six thousand dollars of principal of said bonds due on the first day of January, eighteen hundred and fifty-eight, have not been paid by said company:

Resolved, &c., That the mayor be and he is hereby directed to pay said bonds and interest due and unpaid in accordance with the terms of the act passed the eighth of February, eighteen hundred and fifty-five, out of the funds that may be derived from the notes of the corporation issued in anticipation of the revenue under the act approved the ninth of December, eighteen hundred and fifty-seven.

Mr. Riggs submitted the following resolution, which was read three times and adopted:

Resolved, That the mayor be and he is hereby authorized, with the advice of the attorney of the corporation, to employ such counsel and take such legal steps as may be deemed necessary and advisable for protecting the corporation of Washington from loss by the failure of the Alexandria and Washington Railroad Company to pay its bonds and the interest thereon.

Mr. Moore submits resolution of inquiry No. 3, which is again stifled.

Mr. Moore submitted the following resolution, viz:

Resolved, That a special committee of three be appointed to investigate and report to this board the circumstances under which this corporation became to any extent liable for the debts of the Alexandria and Washington Railroad Company, how far it is so liable and what security this corporation has for the repayment of the whole or any part of this indebtedness of some eighty thousand dollars, in which it would appear this corporation has become involved.

The said resolution having been read—

Mr. Evans moved that it be laid on the table, and the question having been taken, it was determined in the negative, as follows:

Yeas—Messrs. Evans, Houston, Pearson and Smith—4.

Nays—Messrs. Barry, Clark, Dove, Donoho, Goddard, Miller, Moore, Ruff and Bayly—9.

(Mr. Riggs declined voting for the reasons heretofore assigned.

83 The question was then on the adoption of the resolution, and it was determined in the negative.

Yeas—Messrs. Barry, Goddard, Miller, Moore, Ruff and Bayly—6.

Nays—Messrs. Clark, Dove, Donoho, Evans, Houston, Pearson and Smith—7.

(Mr. Riggs declined voting, as before.)

The resolution was therefore rejected.

Mr. Moore submits resolutions of inquiry No. 4, again stifled and excluded from notice on the journal.—Proceedings of the board of aldermen.

MONDAY, *January* 18, 1858.

Mr. Moore submitted a preamble and resolution for the appointment of a special committee to inquire into and report to this board all the essential facts connected with the liabilities of this corporation on account of debts of the Washington and Alexandria Railroad Company which can now be procured.

The said preamble and resolution having been read, the question was on the passage thereof, and being taken, it was determined in the negative by the following vote:

Yeas—Messrs. Goddard and Moore—2.

Nays—Messrs. Clark, Dove, Donoho, Evans, Houston, Pearson, Riggs, Ruff, Smith and Bayly—10.

(Mr. Miller was excused from voting.)

Mr. Evans moved that the secretary be directed not to enter on the journal the preamble to the resolution submitted by Mr. Moore this evening, and after some discussion—

Mr. Moore moved that the board adjourn, which motion was negatived by the following vote:

Yeas—Messrs. Houston and Moore—2.

Nays—Messrs. Clark, Dove, Donoho, Evans, Goddard, Miller, Pearson, Riggs, Ruff, Smith and Bayly—11.

The question was then on the motion of Mr. Evans, and it was carried in the affirmative by the following vote:

Yeas—Messrs. Clark, Dove, Donoho, Evans, Houston, Pearson, Riggs and Smith—8.

Nays—Messrs. Goddard Miller, Moore, Ruff and Bayly—5.

Resolution of inquiry No. 5; again stifled.

Mr. Bayly submitted the following resolution:

Resolved, That a special committe of three members be appointed to examine into the whole subject in relation to the guarantee
84 of the bonds of the Washington and Alexandria Railroad Company by this corporation, and to report to this board whether the provisions of the act making the guarantee were complied with, and whether this corporation was secured from loss at the time, and if not, why it was done.

The resolution having been read—

Mr. Donoho moved that it be laid on the table, which motion was negatived by the following vote:

Yeas—Messrs. Clark, Donoho, Evans, Houston, Pearson and Smith—6.

Nays—Messrs. Dove, Goddard, Miller, Moore, Ruff and Bayly—6.

(Mr. Riggs was excused from voting.)

The question was then on the adoption of the resolution, and it was determined in the negative by the following vote:

Yeas—Messrs. Dove, Goddard, Miller, Moore, Ruff and Bayly—6.

Nays—Messrs. Clark, Donoho, Evans, Houston, Pearson and Smith—6.

(Mr. Riggs was excused from voting.)

So the resolution was rejected.

Inquiry No. 6 stifled.—From the journal.—Proceedings of the board of common council.

MONDAY, *January* 18, 1858.

The board proceeded to the consideration of the joint resolution from the board of aldermen to provide for payment of certain bonds, which was read twice, when—

Mr. Brown moved to refer said joint resolution to the committee of ways and means.

Mr. Jefferson moved to amend the motion by adding the following instructions:

"And that said committee be instructed to inquire into the circumstances and facts under which the alleged liability of this corporation for the bonds of the Washington and Alexandria Railroad Company was incurred, and to request an opinion of the corporation attorney as to the legal competency of the mayor and councils of Washington to pass an act binding the corporation for the debts or

obligations of a railroad company, and to report the whole to this board, together with such views and recommendations in regard to the subject as the committee may deem proper."

Mr. Lloyd moved to lay the instructions on the table; which motion was rejected.

85 The question then recurring on the adoption of the instructions, it was decided in the negative by the following vote:

Yeas—Messrs. Clarke, Edmonston, Jefferson, Kennedy, O'Hare, Orme, Turton, Tree, and Wallace—9.

Nays—Messrs. Brown, Crandell, Fisher, French, Gordon, Hutchinson, Lloyd, Mulloy, Polton, and the President—10.

The bill was then referred to the committee on ways and means.

The joint resolution of the board of aldermen in relation to the failure of the Alexandria and Washington Railroad Company to pay its bonds was taken up, read twice, and referred to the committee on ways and means.

Proceedings of the Board of Aldermen.

MONDAY, *January* 25, 1858.

Mr. Moore submitted the following resolution, which was read and adopted, viz:

Resolved, That the mayor be, and he is hereby, requested to communicate to this board a copy of any and every opinion which may at any time have been given by the late corporation attorney on the subject of a subscription by this corporation to the stock of any railroad company, or concerning the guarantying by this corporation of the bonds of any such company, or advisory of the mode in which any such subscription or guarantee might be made, or as to the proper means of obtaining security therefor.

Inquiry No. 7.—Out of order.—Proceedings of the Board of Common Council.

FRIDAY, *January* 22, 1858.

Mr. Brown, from the committee of ways and means, reported the joint resolution from the board of aldermen providing for the payment of interest on certain bonds.

Mr. Kennedy moved to lay said joint resolution on the table, and offered the following:

Resolved, That a joint special committee of seven members, one from each ward—three from the board of aldermen and four from the board of common council—be appointed by the respective presidents to examine into the whole subject in relation to the guaranty of the bonds by this corporation of the Washington and Alexandria Railroad Company; and that said committee be empowered to send for persons and papers, for the purpose of eliciting all information upon the

86 subject of said road, and report to the respective boards whether the provisions of the act approved February 8, 1855, or any other act or proceeding making the guarantee, were complied with, and whether this corporation was secured from loss at the time under said act or proceeding; and if not, why were said bonds issued and guarantied.

The President ruled said joint resolution out of order.

The question was then taken on the motion to lay the joint resolution reported from the committee on ways and means on the table, and was decided in the negative, as follows:

Yeas—Messrs. Edmonston, Kennedy, Orme, and Wallace—4.

Nays—Messrs. Brown, Clarke, Crandell, Fisher, French, Gordon, Hutchinson, Lloyd, Mulloy, O'Hare, Polton, Turton, Tree, and the President—14.

Mr. Orme moved that the further consideration of the subject be postponed until Monday next.

And the question being taken, it was decided in the negative, as follows:

Yeas—Messrs. Edmonston, Kennedy, Orme, and Wallace—4.

Nays—Messrs. Brown, Clarke, Crandell, Fisher, French, Gordon, Hutchinson, Lloyd, Mulloy, O'Hare, Polton, Turton, Tree, and the President—14.

The joint resolution was then read the third time, and passed by the following vote:

Yeas—Messrs. Brown, Clarke, Crandell, Fisher, French, Gordon' Hutchinson, Lloyd. Mulloy, O'Hare, Polton, Turton, Tree, and the President—14.

Mr. Orme moved that the board do now adjourn, which motion was not agreed to.

Mr. Brown, from the committee on ways and means, reported the joint resolution from the board of aldermen in relation to the Washington and Alexandria Railroad Company; which was read the third time and passed.

Proceedings of the Board of Common Council.

MONDAY, *January* 25, 1858.

The President laid before the board a communication from the mayor, in answer to a resolution of the 14th ultimo calling for certain information in relation to the Washington and Alexandria Railroad Company; which was read and ordered to be published, as follows:

MAYOR'S OFFICE.
Washington, January 25, 1858.

To the Board of Common Council:

GENTLEMEN: In reply to your resolution of the 14th ultimo
87 making inquiries in relation to the guaranty by this corpora-

tion of certain bonds of the Alexandria and Washington Railroad Company, I respectfully state, that the bonds of that company to the amount of sixty thousand dollars were guarantied by this corporation; six thousand dollars of which fell due on the 1st instant, and were not paid, and that the railroad company failed to pay the interest due on that day, amounting to eighteen hundred dollars, for which this corporation is liable, if the guarantee above referred to is acknowledged to be good. The other points embraced in your inquiry are involved in doubts which are now undergoing legal solution, the result of which will be communicated to you as soon as it transpires.

Enclosed you will receive a copy of a communication addressed by me to the two boards of the city councils on this subject on the 4th instant, which I intend as a reply to your resolution, containing all the facts then authentically in my possession, and which was retained in the board of aldermen instead of being sent to you, together with the action predicated upon it.

Very respectfully,

WM. B. MAGRUDER, *Mayor.*

Proceedings of the Board of Aldermen.

MONDAY, *March* 1, 1858.

The chair laid before the board a communication from the mayor in reply to a resolution of this board asking for a copy of an opinion of the late corporation attorney on the subject of a subscription by this corporation to the stock of any railroad company, or concerning the guarantying of the bonds of any such company, and stating that he had not been able to find any such opinion on file in his office; which communication was read and laid on the table.

Since the legislation above quoted the acts of council have been principally confined to appropriations of money to pay the interest and bonds upon this debt, except when the city was not in funds, when the mayor was authorized to raise money by loan to pay this claim. One of these loans thus made, amounting to $10,000, falls due in a few days.

After having duped our city fathers to the tune of $60,000, this company, through their indefatigable officers above named, contracted debts, &c., on which judgments have been procured, amounting to $52,000. They also contracted a debt with Fowle & Snowden amounting to same $10,000. They then issued $30,000 in coupon bonds, to secure which they gave a third deed of trust. This
88 claim amounts now to about $38,400. The total liabilities of this company at present, as far as known, would be as follows:

City of Washington	$78,000
Sundry judgments	52,000
Fowle & Snowden	10,000
Third deed of trust, dated July 10, 1857	38,400
Amount of liabilities	$178,400

The original estimate for building said road entire was less than $100,000; where the surplus went is not known and probably never will be.

Of the debt incurred by action of city councils portions have from time to time been paid and retired, as under the provisions of the act $6,000 and interest is payable annually to the holders of these certificates. The total debt and interest to January, 1862, would have been about $78,000; of this amount $42,000 has been retired, leaving a balance due of about $36,000.

On the 11th of January, 1862, Mr. Alexander Hay, a gentleman representing other claims upon the road to the amount of say $28,000, made the following proposition to the city councils:

WASHINGTON, D. C., *January* 11, 1862.

Hon. R. Wallach, Mayor:

SIR: Representing as I do a large amount of indebtedness against the Alexandria and Washington railroad, and being aware of the demands of the city of Washington against the same, by virtue of her guaranty of certain bonds, and desiring, as far as possible, to protect the interest of all concerned, and in response in your verbal suggestions to me on yesterday, I respectfully propose as follows:

1st. I will assume the liability of the city from this time forward, and save it, harmless, from any further demand, either for the principal or interest, on said bonds.

2d. I will keep on deposit, to the credit of the city, a sum of money equal to the semi-annual interest to accrue due.

3d. I will pay the annual instalments of the principal of said bonds, (say $6,000,) as the same become due, in discharge of the city's obligations.

4th. I will reconstruct and remount said road in good working order, adopting the best and most substantial mode of construction. This estimate for this purpose exceeds $60,000.

89 5th. I will execute to the city a new deed of trust on the road covering all these improvements so to be made, as security for the faithful performance of this undertaking, besides keeping the current interest on deposit as aforesaid.

6th. In consideration of the premises the city will convey to me and my associates all its right title and interest in and to said road. To enable me to operate effectively, I should be informed by Tuesday next of the acceptance of this proposition.

The material has all to be purchased, which will be done so soon as informed of the agreement to the above effect being acceded to.

Respectfully,

ALEXANDER HAY.

P. S. I will take occasion to add that the government has, I regret to say, persistently refused to purchase said railroad. Hence there is no way for myself or the city to secure our respective indebtedness but to rebuild and use the road. I have indicated the terms upon which I am willing to do so.

ALEXANDER HAY.

This communication was referred to a select committee consisting of Messrs. Brown, Fisher, Wilson, Morgan and Shepherd, of the two boards; and on the 10th of March, 1862, Messrs. Brown, Fisher and Wilson reported the following joint resolutions, which passed the board of aldermen, but were neglected by the lower board:

JOINT RESOLUTION disposing of all the interest of the corporation in the Alexandria and Washington Railroad to Alexander Hay.

Be it resolved, &c. That the proposition of Alexander Hay, dated January 11, 1862, proposing to purchase, upon certain conditions therein named, all the interest of this corporation in the Alexandria and Washington railroad, be and the same is hereby accepted: Provided said Hay will agree, instead of giving the deed of trust as proposed, to pay, cancel, and file in the office of the register of this city all the outstanding bonds of the said railroad company guarantied by the corporation of Washington, (thirty thousand dollars,) within ninety days from the date of the appoval of these joint resolutions.

And be it resolved, That the mayor be and he is requested to take immediate steps to consummate the sale of the interest of the corporation in said road, by requesting the trustees named in the deed of trust of April 19, 1855, to take possession of the road and dispose of the same at private sale to said Hay, upon the terms and conditions aforesaid.

90 Mr. Shepherd, of said committee, made a minority report against such sale, unless Mr. Hay would consent to secure the amount already paid by the city, viz., $42,000, by giving a deed of trust payable at the expiration of ten or fifteen years, and the board concurring in his opinion the sale was not effected. Mr. Hay and those he represents then sold the road at public sale on the 10th day of April, 1862, under the third deed of trust given to secure the $30,000 coupon bonds issued in 1857.

We append a copy of deed, with the other papers connected with the change of trustee, simply remarking that while these gentlemen deny that the claim of the city is worth anything, the deed under which they sell expressly states "that the existing lien to the city of Washington shall retain its priority over this deed," &c.

Document A in report of sale.

At a term of the County Court of Alexandria county, Virginia, held in the court-house of said county this third day of February, the following order was entered as a part of the proceedings of the court:

It appearing to the court from sufficient evidence this day produced, that Walter Lenox, the trustee named in a certain deed of trust, bearing date on the 16th day of July, 1857, executed by the Alexandria and Washington Railroad Company to the said Lenox, for the security of $30,000 of the coupon bonds of the said company, and for other purposes therein mentioned, has become and is wholly incapacitated for executing the said trusts, or guarding the rights

therein provided and created: The court is of the opinion and so declares, that the trusteeship in said deed of trust has become vacant, and on the application of Joseph Davisson, the attorney-in-fact of the holders of all the bonds in said deed of trust mentioned, the court doth appoint and substitute Joseph B. Stewart, of the city of Washington, as trustee in the place of the said Walter Lenox, and the said Stewart having this day accepted said trust in open court, he is substituted to all the rights and privileges, duties, and responsibilities of the said Lenox as trustee under and by virtue of said deed of trust.

A true copy from the minutes.

Given under my hand and seal of the County Court of Alexandria county this third day of February, A. D. 1862.

[SEAL.] Test: JEFFERSON TACEY, *Clerk*.

91 CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded, Will Book No. 8, page 121. Examined and delivered.

J. TACEY, *Clerk*.

Deed of trust.—Document B in report of sale.—Alexandria and Washington Railroad Company to Walter Lenox.

Deed trust recorded 25th July, 1857, in Liber J. A. S., No. 138, folio 327, &c.

This indenture made this 16th day of July, 1857, between the Alexandria and Washington Railroad Company, a company duly incorporated by an act of the general assembly of Virginia, of the first part and Walter Lenox, of the city of Washington and District of Columbia of the second part.

Whereas by an act of the general assembly of Virginia, passed on the 27th day of February, 1856, the said Alexandria and Washington Railroad Company were authorized to sell their bonds with coupons annexed to the amount of one hundred thousand dollars, at a rate of interest not exceeding seven per cent. per annum.

And whereas at a general meeting of the stockholders of said company, held on the 15th day of July, 1857, the president and directors of the company under the authority of said act, were authorized and directed at such time or times hereafter as they may deem expedient, to issue the bonds of the company, with coupons annexed, to the amount of one hundred thousand dollars, or such lesser portion thereof as they may deem proper, the interest to be at the rate of seven per cent. per annum, and to be payable semi-annually in the city of New York, and the principal to be payable at such time and place as the board may deem best for the interest of the company, and did further direct the board of directors to execute a mortgage or deed of trust on the property and franchises of the company to secure the payment of the principal and interest of said bonds, and to sell the said bonds to raise money for the use of said company.

And whereas the said president and directors, pursuant to the power and authority vested in them as aforesaid, have caused
92 to be executed the bonds of said company, bearing date on the 22d of July, 1857, which bonds are thirty in number, and are numbered from one to thirty, inclusive, being for the sum of one thousand dollars each, and amounting in the aggregate to thirty thousand dollars; and which said bonds are to be severally authenticated by a certificate endorsed or signed by the party of the second part, and are payable to Walter Lenox, or bearer, in the city of New York, on the 22d day of July, 1877, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the 22d day of January and on the 22d day of July of each year, at the Bank of Commerce, in New York, on the presentation and delivery of the interest coupons anexed to said bonds, signed by the treasurer of the company. The payment of which bonds and the interest thereon the said company desires to secure according to the tenor of the said bonds respectively.

Now this indenture witnesseth that the said Alexandria and Washington Railroad Company, in consideration of the premises aforesaid, and of ten dollars to the company in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, assigned and set over, conveyed and confirmed, and do, by these presents grant, bargain and sell, assign, set over, convey and confirm unto the said party of the second part, his successors in the trust hereby created, and his or their assigns, all the railroad of said company made or to be made between its terminus in the city of Alexandria, and State of Virginia, the depot of the Baltimore and Ohio Railroad Company, in the city of Washington, in the District of Columbia, together with the franchises of said company, and all the property, rights and privileges of the company pertaining thereto; to have and to hold the same and every part thereof, unto the said party of the second part, his successors in said trust, and his or their assigns forever; upon trust, however, for the following uses, intents and purposes, and none other; that is to say, the said company shall remain in quiet and peaceable possession of the said railroad, and all the property, rights, privileges and franchises above mentioned, and shall have the control, management and use of the same, with the income and profits thereof. But in the event said company shall fail to pay the interest on said bonds, so that there shall be at any time six months' interest wholly due and unpaid, or in case of failure to pay the principal and interest for the period of six months after the said bonds shall have become due and payable, according to the tenor thereof, and payment be demanded,
then, or in either case, the said trustee or his successors in
93 this trust, shall, upon the request in writing of the holders of at least three-fifths of said bonds, cause the aforesaid premises and the property hereby conveyed, or so much and such parts thereof as may be necessary for the purpose, to be sold at public auction to the highest bidder, for ready money, in the city of Alexandria, after giving at least sixty days' notice of the time,

place and terms of sale in newspapers published in each of the cities of Alexandria, Washington city, and New York, and shall convey the same to the purchaser or purchasers thereof, and shall apply the proceeds of such sale, (after deducting the expenses of sale, and the costs and charges attending the execution of this trust, including such compensation to the trustee as is usually allowed by the judge of the Circuit Superior Court of law and chancery for Alexandria county in trust deeds,) in discharge of the principal and and interest upon said bonds, or such of them as may then be due and outstanding, and the residue thereof to the parties of the first past or their assigns. But if the party of the first part shall well and truly pay the semi-annual interest on said bonds as the same may become due and payable, and is demanded of, and shall also pay and discharge the principal of said bonds when the same becomes payable according to the tenor thereof, and is demanded, then this indenture to be void, otherwise to remain in full force.

And it is mutually agreed, that in case of the death, incapacity, or resignation of the party of the second part, or of his successors in this trust, then the office of trustee filled by him shall become vacant, and such vacancy shall be filled by an appointment to be made by any court of record in the county of Alexandria, on the application of the parties of the first part, or of the holders of three-fifths of said bonds; provided, however, in the last case, notice of the application of the parties making such request be given to the president or one of the directors of said company, and all the rights, power and authority hereby conferred on the original trustee shall then and there devolve upon and be invested in his successor or successors so appointed.

And it is further agreed, that the said party of the second part, and his successors in said trust shall be accountable for reasonable diligence only in the management thereof, and shall not be responsible for the acts of any agent employed by him or them when such agent is selected with reasonable discretion. This conveyance is made to secure the payment of the thirty bonds aforesaid, for one thousand dollars each, numbered as aforesaid, with the semi-annual interest, and takes precedence as a security over any conveyance which may be made to secure the remaining sum of seventy
94 thousand dollars for which the company are authorized to issue their bonds, or any portion thereof; but is subject, however, to a deed of trust issued by the said Alexandria and Washington Railroad Company to Joseph H. Bradley and A. Thomas Bradley, of Washington city, dated the 19th day of April, 1855, and duly of record in the land records of Washington county, in the District of Columbia, and in the County Court of Alexandria county, in the State of Virginia, conveying the said road, with all its rights, franchises and property to the said trustees, to secure the payment of the principal and interest of sixty thousand dollars in the bonds of the company guarantied by the city of Washington.

And it is hereby agreed, that the existing lien to the city of Washington for sixty thousand dollars shall retain its priority over this

deed, and be subject to any change or modification which may be agreed upon by the said city and railroad company, or a new lien in place of the existing one to the city of Washington, to the extent of sixty thousand dollars may be made in the said railroad company, which shall retain its priority over its deed of this deed of trust made to secure thirty thousand dollars in the bonds of the company.

In testimony whereof the said party of the first part have caused this indenture to be signed by their president, and the corporate seal of said company to be hereto affixed, and the party of the second part has hereto set his hand and seal the day and year first above written.

JAMES S. FRENCH,
President A. and W. R. R. Co.
WALTER LENOX, *Trustee.*

[SEAL.]
[Alexandria and Washington Railroad Company.]

Signed, sealed and delivered in presence of—
F. I. MURPHEY.
J. H. GODDARD.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22 1862.

Returned and recorded, Will Book No. 8, page 117, and examined and delivered.

J. TACEY, *Clerk.*

At a meeting of the board of directors of the Alexandria and Washington Railroad Company, held in their office in the city of Alexandria, on the 15th day of July, 1857, Benjamin Hallowell was called to the chair, and R. M. Smith was appointed secretary. A
95 draft of a deed of trust from this company to Walter Lenox, bearing date the day of July, 1857, which, when executed, will convey to the said Walter Lenox the railroad property and franchises of the company to secure the payment of the coupon bonds of the company to the amount of thirty thousand dollars, and the semi-annual interest thereon at the rate of seven per cent. per annum, with power to the said Lenox, upon certain contingencies therein mentioned, to take possession of and sell the property conveyed, was submitted to the board, and, on motion, it was unanimously resolved, that the board approve the said draft, and do hereby authorize the president to execute the same, by signing his name, and affixing the corporate seal of the company thereto, and to acknowledge the same when so executed as the act and deed of the company; the same being done in conformity with the resolution adopted on the 15th day of July, 1857, by the stockholders of said company, as appears from the minutes of their meeting.

BENJAMIN HALLOWELL,
Chairman.

A copy from the minutes.

R. M. SMITH, *Secretary.*

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Be it remembered, that on this 25th day of July, in the year of our Lord one thousand eight hundred and fifty-seven, before the subscribers, two justices of the peace in and for the county of Washington aforesaid, personally appears James S. French, president of the Alexandria and Washington Railroad Company, and acknowledges the foregoing deed of trust or instrument of writing to be the act and deed of the Alexandria and Washington Railroad Company, delivered for the use and purposes therein expressed.

Given under our hands and seals the day and year first hereinbefore written.

[SEAL.] J. H. GODDARD, *J. P.*
[SEAL.] F. I. MURPHEY, *J. P.*

True copy, test.

JOHN A. SMITH, *Clerk.*

Power of attorney to Joseph Davison under the hand and seal of Mr. Benjamin Thornton.

BOROUGH OF LEEDS, IN THE COUNTY OF YORK:

To all to who these presents shall come, I, James Kitson, esq., mayor of the borough of Leeds, in the county of York, in
96 that part of the United Kingdom of Great Britain and Ireland called England, in pursuance of the laws in that behalf, do hereby certify, that on the day of the date hereof, personally came and appeared before me Benjamin Thornton, named in the power of attorney hereunto annexed, being a person well known and worthy of good credit, and who did, before me, solemnly and sincerely declare to be true the several matters and things mentioned and contained in the said power of attorney.

In faith and testimony whereof, I, the said mayor, have caused the corporate common seal of the said borough to be hereunto put and affixed, and the said power of attorney to be hereunto annexed. Dated at Leeds aforesaid, the twentieth day of February, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.] JAMES KITSON,
Mayor of Leeds.

I, James William Marshall, consul of the United States of America, at Leeds, and the dependencies thereof, do hereby certify to all whom it may or doth concern, that the above written James Kitson, before whom the power of attorney hereunto attached has been acknowledged by Benjamin Thornton, is the mayor of the borough of Leeds aforesaid, and that the seal above attached is the corporate seal of the borough of Leeds aforesaid.

In testimony whereof, I, the said consul, hereunto set my hand and affix my seal of office, at Leeds, this twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

[SEAL.] JAS. W. MARSHALL,
U. S. Consul.

This is the power of attorney referred to in my annexed certificate dated this twentieth day of February, 1862.

JAMES KITSON, *Mayor.*

Know all men by these presents, that I, Benjamin Thornton, of Number 4 Brompton square, in the county of Middlesex, in that part of the United Kingdom of Great Britain and Ireland called England, gentleman, have made, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint Joseph Davison, of Washington city, and District of Columbia, in the United States of America, formerly a brewer, but now retired from business, my true and lawful attorney, for me and in my name, or otherwise,
97 and for my use, to apply for, ask, demand, and receive, and, if necessary, sue for and recover from the Alexandria and Washington Railroad Company, and their assigns, or from the person or persons who, for the time being, may be liable to pay the same, all principal moneys and interest, and all and every sum and sums of money whatsoever secured by or due, or to become due, upon or in respect of thirty several bonds, each being under the corporate seal of the said railroad company, and also under the hand of "James S. French," president of the said company, and dated the twenty-second day of July, one thousand eight hundred and fifty-seven, and each bond purporting to secure to Walter Lenox, or bearer, one thousand dollars and interest as therein mentioned, and which said bonds and the trust deed therein referred to are, or shortly will be, deposited in the bank of Messieurs Riggs and Company, of Washington city aforesaid, for safe custody, and upon payment of the same moneys, or of the sum of thirty thousand dollars into the said bank of Messieurs Riggs and Company, in full discharge of all principal and interest secured by the said bonds, to give a valid release and discharge for the same, and to give up the said bonds to the said railroad company, or their assigns, or the person or persons who may pay the same; and also, for the purposes aforesaid, to present such petition or petitions, and to institute such proceedings at law or otherwise, and generally to do and perform all and every such acts and act, deed and deeds, in and about the conduct, management, prosecution, suspension, or determination, of any proceedings to be taken or prosecuted under this power as the said Joseph Davison may think expedient, as fully and effectually to all intents and purposes as the said Benjamin Thornton might or could do if personally present, the said Benjamin Thornton hereby agreeing to ratify and confirm whatsoever the said Joseph Davison hath done, or shall lawfully do, or cause to be done in or about the premises by virtue of these presents.

In witness whereof the said Benjamin Thornton hath hereunto set his hand and seal this twentieth day of February, one thousand eight hundred and sixty-two.

[SEAL.] BENJAMIN THORNTON.

Signed, sealed, and delivered, by the above-named Benjamin Thornton, in the presence of—

J. W. MARSHALL, *U. S. Consul.*

THOMAS RICHARDSON WRAY, (*his clerk.*)

On the twentieth day of February, in the year of our Lord one thousand eight hundred and sixty-two, before me, the undersigned, United States Consul at Leeds, in England, personally ap-
98 peared Benjamin Thornton, of Number 4 Brompton Square, in the county of Middlesex, England, gentleman, who is well known to me to be the person described in, and who executed the foregoing power of attorney, and acknowledged the same to be his act and deed, and declared that he had executed the same freely and voluntarily to the uses and for the purposes therein mentioned.

Given under my hand and seal of office according to the date above, and of the independence of the United States the eighty-sixth.

[SEAL.] JAS. W. MARSHALL,
U. S. Consul.

Document C in report of sale.

WASHINGTON CITY, D. C., *February 4th*, 1862.

SIR: As agent and attorney in fact for Benjamin Thornton, esq., of England, and others, owners of more than three-fifths of the thirty thousand dollars of coupon bonds issued by the Alexandria and Washington Railroad Company, and secured by deed of trust dated 16th day of July, 1857, to Walter Lenox, as trustee, in whose place you are substituted, by order of the honorable County Court of Alexandria county, Virginia, on the third instant,

I hereby notify you, and request that you, as such substituted trustee, do proceed to advertise for sale, and do sell said railroad, with all its property and franchises, and apply the proceeds of sale, as designated in said deed of trust, and do and perform such other matters and things as by virtue of said deed you are required as trustee as aforesaid.

Witness my hand as attorney and agent of Benjamin Thornton, esq., and others.

JOSEPH DAVISON.

To Joseph B. Stewart, esq., Solicitor, Washington city, &c.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded Will Book No. 8, page 121. Examined and delivered.

J. TACEY, *Clerk.*

99 *Documents D, E and F, in report of sale.*

Public sale of the Alexandria and Washington railroad, &c.

Default having been made by the Alexandria and Washington Railroad Company, in the payment of the accrued interest on certain bonds mentioned and described in a certain deed of trust from said company to Walter Lenox, bearing date on the 16th day of July, 1857, and the undersigned having, by an order of the County Court

of Alexandria, made at its February term, 1862, been substituted and appointed trustee under the said deed of trust in place of said Lenox; and having been requested in writing by the holders of upwards of three-fifths of the bonds in said deed mentioned, I will, pursuant to said request, and of the provisions of said deed of trust, on Thursday, the 10th day of April, 1862, in front of the Mayor's office in the city of Alexandria, Virginia, at 12 o'clock m., sell at public auction for cash, all the railroad of said company, between its terminus in Alexandria, Virginia, and the depot of the Baltimore and Ohio railroad in Washington, together with the franchises of said company, and all the rights and privileges of the company pertaining thereto, and all property embraced in or covered by said deed of trust.

Note.—A copy of the deed of trust above mentioned may be inspected at my law office in Washington city, No. 450 Pennsylvania avenue.

JOSEPH B. STEWART,
Substituted Trustee.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded Will Book No. 8, page 122. Examined and approved.

J. TACEY, *Clerk.*

Trus'ees report of sale.

Report of sale of the Alexandria and Washington railroad, made this tenth day of April, 1862, and purchased by Alexander Hay, for the sum of $12,500.

By order of the honorable County Court of the county of Alexandria, State of Virginia, the undersigned was appointed trustee to discharge the duties imposed by a certain deed of trust executed by the Alexandria and Washington Railroad Company to one Wal-
100 ter Lenox, dated July 16, 1857, as will more fully appear by a copy of said order and said deed filed herewith, and made part hereof, marked A and B, which trusteeship the undersigned accepted.

On the 4th day of February, 1862, the day next after the date of said order, the undersigned received a written request from Joseph Davidson, the attorney in fact, and agent for more than three-fifths of the beneficiaries or holders of a certain thirty thousand dollars of coupon bonds issued by said railroad company, and secured by said deed of trust, the coupons of which were then more than due, requesting the undersigned to make sale of said railroad, according to the terms of said deed of trust, the original of which said request and notice is made part hereof, marked "C."

The undersigned, pursuant to said request, and in obedience to the requirements of said deed of trust herein referred to, did cause said road to be advertised for sale for sixty days previous to the

tenth day of April, 1862, in the "Local News," a paper published in Alexandria, and in the "National Intelligencer," a paper published in the city of Washington, and in the "New York Herald," a paper published in the city of New York, a certified copy of each of which publications is herewith exhibited and made part hereof, marked D, E, and F.

And the undersigned, in pursuance of said notice did, in the city of Alexandria, in front of the Mayor's office, at the hour of twelve (12) o'clock m., on the said 10th day of April, 1862, as trustee aforesaid, then and there make public proclamation of his duty and purpose to expose to sale said road, whereupon he was notified and requested to give notice of various and sundry liens, claims, and charges upon said road in the shape of deeds of trust, judgment at law, and suits pending, which were in due order proclaimed. And the undersigned then proceeded to solicit bids for said road under said deed of trust first above mentioned, to wit, a deed of trust dated the 16th day of July, 1857, to secure the principal and interest of thirty thousand dollars of coupon bonds, the purchase money to be paid in ready money; and having made such proclamation of sale proceeded in person to cry said road for sale and soliciting bids for the same; whereupon after several bids, Alexander Hay, esq., of Philadelphia, bid the sum of twelve thousand five hundred (12,500) dollars, and there being no further bid or advance price offered, the said railroad, with all its franchises, rights, property and effects, as advertised as aforesaid, was struck off and declared sold to Alexander Hay, esq., aforesaid. Of all which fact and sale and purchase, written memorandum was then and there made, duly attested by three disinterested bystanders, and persons of mature age and
101 judgment present at said sale, as will more fully appear by the said papers filed with and made part hereof, marked G.

And the undersigned further reports, that on this day the said Alexander Hay paid to the undersigned, as trustees aforesaid, the full and even sum of twelve thousand five hundred ($12,500) dollars, for which the undersigned gave his receipt bearing date this tenth day of April, 1862; which payment being a full compliance with said terms of sale, the said Alexander Hay is hereby declared the purchaser of said Alexandria and Washington railroad, with all and singular the rights, property, privileges and appurtenances of the same of any and all description whatsoever.

Given under my hand and seal this tenth day of April, 1862.

[SEAL.] JOSEPH B. STEWART,
Trustee.

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

This report was received in the office and recorded in Will book No. 8, pages 115, 116, 117, 118, 119, 120, 121, 122, 123 and 124.

Test: J. TACEY, *Clerk.*

CLERK'S OFFICE, ALEXANDRIA COUNTY COURT,
July 22, 1862.

Returned and recorded, Will book No. 8, pages 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, and examined and delivered.

J. TACEY, *Clerk.*

The sale thus effected, a reorganization of the Washington and Alexandria Railroad Company (or what purported to be a reorganization) was effected on the 3d of May, 1862, by the election of Messrs. A. Hay, James Thornton, Horace Day, Silas Seymour and Jos. B. Stewart as directors, each of these gentlemen receiving three thousand votes as appears on the journal published by direction of said board.

These gentlemen have been and are now endeavoring to secure a charter from Congress for the erection of another bridge across the Potomac and the right of way through certain streets of the city, and to effect an arrangement with the United States (who rebuilt
102 and remounted this road at the commencement of hostilities) whereby they can get possession of the road, but up to this time their efforts have been unsuccessful.

Your committee have been somewhat embarrassed in determining the exact amount of present indebtedness of this corporation on account of these guarantied bonds. The resolution which was referred to them providing for the payment of semi annual interest due July 1st, 1862, which resolution passed the board of aldermen, is as follows:

"An act authorizing the payment of the semi-annual interest due on certain bonds guarantied by the corporation.

"Be it enacted, &c. That the mayor be and he is hereby authorized to pay the semi-annual interest due July 1, 1862, to the holders of the bonds of the "Alexandria and Washington Railroad Company," guarantied by this corporation pursuant to the requirements of the act of February 8, 1865; and that the sum of nine hundred dollars be and the same is hereby appropriated out of the general fund to pay said interest."

This provides nine hundred dollars to pay interest on thirty thousand dollars alleged to be outstanding in bonds. Upon application to the register they have received the following statement of the bonds and the holders thereof:

"REGISTER'S OFFICE, *October* 9, 1862.

"J. W. Thompson, esq., chairman of finance committee.

"Dear sir: There are outstanding guarantied bonds of the Washington and Alexandria Railroad Company $30,000, viz:

Riggs & Co	$23,000
J. C. McGuire & Co	5,000
P. B. Lanaghan	2,000
	$30,000

"Respectfully yours, &c.,

"SAMUEL E. DOUGLAS,

"*Register.*"

Your committee in order to substantiate this statement and satisfy themselves as to its correctness, addressed the following communication to the mayor:

WASHINGTON, *January* 5, 1863.

Hon. R. Wallach, mayor, &c.

Sir: Please furnish me replies to the following interrogatories:

103 No. 1. The amount, principal and interest, paid on the Washington and Alexandria Railroad bonds to date by this corporation?

No. 2. The number of bonds now held by Riggs & Co., and the amount they claim as due on them?

No. 3. The amount advanced by Riggs & Co. on the bonds, on the check of Mayor Towers, and the committee acting with him?

An answer to-day will oblige, yours, respectfully,

J. W. THOMPSON,
Chairman of the Select Committee on the Washington and Alexandria Railroad.

To which the following answer was received:

"MAYOR'S OFFICE, *January* 5, 1863.

"Jno. W. Thompson, esq., chairman, &c.:

"MY DEAR SIR: In reply to your first interrogatory of this date I have to inform you that the amount, principal and interest, paid by the corporation of Washington for the redemption of the bonds of the Washington and Alexandria Railroad Company is $41,139 81.

"Not having the information in this office to reply to your second and third interrogatories, Mr. Riggs was requested by me to furnish an answer, and replied to them as follows:

"'WASHINGTON, *January* 5, 1863.

"'Richard Wallach, esq.:

"'DEAR SIR: The amount due Riggs & Co., on the amount of money advanced the corporation of Washington, (Mr. Towers, mayor,) was $14,891 72 on the 31st December, 1861. The number of bonds in their hands is $17,000. All of the money advanced by Riggs & Co. was on the checks of Mayor Towers, which checks have been shown to a member of the committee to which you refer and to several members of the boards.

"'Very truly,

"'GEO. W. RIGGS.'

"Very respectfully,

"RICHARD WALLACH, *Mayor.*"

It will be seen from the above that there is a discrepancy in the statement as to the amount due and the amount of bonds held; and as the amount appropriated to pay the interest—viz: $900—is evi-

dently more than is due, and as larger sums than were ne-
104 cessary have been appropriated for some time back, your committee respectfully report against the passage of this resolution, and recommend that further payments be deferred until the exact amount of indebtedness be ascertained, or the action hereafter recommended be determined.

For the reasons above given, as well as from the belief that it would be improper and inexpedient for the councils to involve the city in the total loss of the amounts it has already expended—viz: $41,139 81—your committee report against the following bill from the board of aldermen, which is now pending in this board:

AN ACT relieving the corporation from all further liability on account of the guarantied bonds of the Alexandria and Washington Railroad Company.

Whereas there is now outstanding and held against the corporation of Washington thirty thousand dollars of bonds or certificates of indebtedness, issued by the "Alexandria and Washington Railroad Company," the payment of which was guarantied by this corporation, under the requirements of the act of February 8th, 1855; and, as security against such guarantee, the said company executed to said corporation a certain deed of trust, dated April 19th, 1855, upon the said railroad:

Now, therefore, with the view of relieving the city from all further liability on account of its said guarantee—

Be it enacted, &c., That the mayor be, and he is hereby, authorized, upon the payment by Alexander Hay and Joseph Thornton of all of the said thirty thousand dollars of outstanding bonds or certificates of indebtedness so guarantied by this corporation, together with the simi-annual interest thereon due on the first of July, 1862, and all interest since accrued to the date of said payment, to assign or transfer to said Hay and Thornton the said deed of trust or obligation, creating a lien in favor of this corporation against the said railroad, in such manner only, however, as to forever relieve the city from any further liability for or on account of such deed of trust, guarantee, or endorsement, including all attorney's or trustee's fees growing out of such deed of trust or other obligation, and the assignment or transfer thereof.

In concluding this report your committee will state that they have given the details of this affair that the board and community might be possessed of all the essential facts connected with this gross misapplication of the city's funds. Every step taken seems to have
105 been in violation of right. The councils violate the charter to effect this guarantee; the committee violate the directions of the councils, and the succeeding councils refuse to investigate it; money is appropriated to pay interest on what the corporation does not own; and, finally, the road is sold without proper steps having been taken to prevent it.

In regard to the future action of this corporation, your committee think that if an equitable arrangement can be effected with the par-

ties representing the other claims on said road whereby the city will be relieved from all responsibility as to their outstanding bonds, and will be secured by the stock of the road to the amount already expended, it would be much better to dispose of the city's interest, experience having shown that an enterprise of this kind can only be carried out effectively by private interests, and that the less the city has to do with its management the better for the success of the road.

They, however, do not recommend such an abandonment of the city's claim as has been proposed in the offer of Mr. Hay, and in the bill just quoted from the board of aldermen. As representatives of this city the board have no right to incur a positive and acknowledged loss of $41,139 81 and more. It is rather their duty to defend the city's claim to the extent of their power. The road is in the hands of the government, is in excellent order, and the claim of the city is as likely to be recognized by them before surrendering the road as is the claim of the other parties. In any event, it behooves this board to protect the interest of the citizens. If wrong has been committed it is not their fault or error, but it is their fault if they do not protect to the fullest extent the city's claim. If an equitable arrangement can be made it is preferable; if such cannot be effected your committee recommend that steps be taken not only to secure the amount for which the old rails sold, viz: $4,000, but also to establish the city's claim in a court of justice.

With this view they report the annexed bill.

J. W. THOMPSON.
CHARLES GORDON.

AN ACT to relieve the city of Washington from any further liability on account of th Washington and Alexandria railroad.

Be it enacted, &c., That there be and is hereby appointed a committee of two members from the board of aldermen and three members of the board of common council, who, in conjunction with the mayor, are hereby empowered to dispose of the city's claim
106 on the Washington and Alexandria railroad to A. Hay and his associates upon the following terms, to wit; that the said Alexander Hay and his associates shall assume and pay the total outstanding liabilities of this corporation, by taking up and providing for the payment of such guarantied bonds to the satisfaction of such bondholders, so that said bondholders will release the city from all future liability to said bondholders, and said Hay and his associates will furnish certificates of stock in said road (secured) to the amount already expended by the city in the payment of its guarantied bonds, such stock to be placed on same footing with other stock in said road.

Sec. 2. And be it enacted, That in case said committee do not effect such sale within the space of thirty days from the passage of this act they are hereby empowered to take such steps as may be deemed necessary to secure the amount of the city's claim, and to institute suit for that purpose; and said committe are hereby empowered to employ such counsel as may be necessary for a proper conduct of the city's suit.

Exhibit B.—No. 3.—Minority report.

As a member of the select committee to whom was referred the communication of the mayor dated July 21st, 1862, in reference to the Washington and Alexandria railroad, the undersigned begs leave respectfully to report to this board the reasons and conclusions which have influenced and actuated him in refusing to concur in the report of the majority of said committee, which was presented to the board January 5th, 1853, and ordered to be printed for the information of the board.

Your committeeman did not regard it as a part of his duty nor of the committee, acting under the resolution of reference, to impugn the motives of those members of a previous council who had legislated upon the subject-matter now under consideration. Those members of both branches of the councils who voted for the guaranty of the corporation of the bonds of the Washington and Alexandria railroad must be regarded, when considered in the light of the report of the majority of the committee, as having wilfully and intentionally defrauded the corporation out of the sum of sixty thousand dollars by the said guaranty.

I assert, as a safe rule of action and conduct, that all men act in accordance with a supposed sense of reason and justice, unless other motives are either apparent or can be satisfactorily established to exist. I cannot but believe that those members referred to, many of them held in high esteem by the community, were actuated by the best and purest motives in their legislative conduct. That they erred, I am quite free to admit, but that they wilfully and intentionally were parties to a fraud upon this corporation, I, in all candor and frankness most positively deny.

We find by reference to the report of the majority that whenever a bill for the payment of the semi-annual accrued interest on the said guarantied bonds was presented, and action about to be taken upon it, a resolution of inquiry was introduced; and because a majority of the councils chose rather to pay a subsisting legal debt than to indulge in the speculative fancy of repudiation, they are charged with stifling or suppressing any investigation. They also must be regarded in the character of "particeps criminis." I rather supposed the duty of the committee to be to inquire into and report to this board "the nature and character of the claim of the corporation upon the said Washington and Alexandria Railroad."

The undersigned assumes as a settled and well established rule, "that all municipal corporations can exercise only such expressly delegated powers, or those necessarily incident to their proper exercise, as are conferred by the creating power, and the exercise of any power not expressly delegated or conferred, or necessarily incident to a granted power, cannot raise or create any legal liability or obligation upon the corporation."

By reference to the charter of 1848, it is expressly provided that the funded debt of the city shall not be increased without the assent and concurrence of two-thirds of the legal voters at a regular elec-

tion. If this was a funded debt, and this condition precedent of a submission to the popular vote was not complied with, certainly no legal liability on the part of the corporation was incurred by the guaranty referred to in the said legislative enactment. That the debt alluded to or the obligation incurred by the said guaranty was a funded debt cannot be denied, because the improvement or contemplated expenditure was not to be made within the limits of the city, for which objects or purposes the revenue raised by taxation can only be applied. It must be admitted, then, as a reasonable and logical conclusion, that the guaranty referred to, being in the nature and character of a funded debt, and being in express contravention of the charter, has not created any legal liability on the part of the corporation.

If, then, there is no subsisting legal obligation on the part
108 of the corporation to pay the outstanding guarantied bonds of the said railroad, why insist upon the sale of the road under your security, or a suit at law? If the corporation is not liable, we should at least so act as not to inflict an unnecessary loss or damage to those who in good faith invested their funds upon the credit of this corporation. The project for building the said road would never have been consummated had not the bonds been guarantied by responsible persons or corporations. The act of this corporation gave the said bonds such a value as they would not per se have had; and though we may regret the loss of the amount thus far paid by reason of the said guaranty, yet we should be careful, in our legislation, lest the residue of the said outstanding unpaid bonds should be repudiated, and thereby the whole amount be lost, and bona fide creditors not only be deprived of their legitimate securities but also be debarred from ever making claim against the corporation for payment of a debt incurred by reason of their said guaranty.

Let us examine the character of the security which the corporation holds to protect itself against loss in consequence of its said guaranty. The charter of the said railroad contemplated a capital stock of three hundred thousand dollars, and subjected the said road, in its corporate capacity, to all the provisions of the code of Virginia applicable thereto.

By the law of Virginia no incorporated company can borrow money and by legal sequence can convey by way of mortgage to secure a debt made such by borrowing, until the capital stock is subscribed for.

The capital stock of this company, as authorized by its charter, was three hundred thousand dollars. Was the capital stock thus authorized subscribed for? The majority report asserts that but two hundred thousand dollars were taken, as follows: James S. French $100,000, Walter Lenox $50,000, and George French $50,000. There are, however, no records extant or in existence to show that one single cent was ever subscribed in aid of the said project. But, suppose there is evidence to show that the entries above alluded to were in reality and fact made, can any one for a moment suppose, who knows anything about the subscribers, that their said subscription was in compliance with the law of Virginia? It contemplated an actual, bona fide subscription before a loan could be effected.

Then, if there was this essential condition precedent to be complied with on the part and behalf of the said company before, in its corporate capacity, it could borrow money; and as this condition or limitation was not fulfilled or complied with, there is no legal debt to this corporation by reason of its guaranty, and the security
109 given to the corporation for the purpose of protecting its supposed legal debt is, like the debt intended to be secured, of no legal force or validity; or, in other words, that if it was not competent for the parties to the security to make a valid, binding, legal debt or obligation, the mere fact that the same parties undertook to secure the same debt by way of mortgage upon the property and franchises of the company cannot impart to the said debt any more validity than it already possessed.

Such are my candid and solemn convictions of the nature and character of the claim of the corporation against the said railroad, and, being desirous of effecting a fair and reasonable adjustment of the difference between this corporation and the present representatives of the said road; believing that if this equitable compromise is consummated the credit of this corporation will not be affected, and the rights of third parties will be preserved and respected, I therefore respectfully recommend to this board to adopt the act which recently passed the board of aldermen, and is now before this board for its action, and which is as follows:

AN ACT relieving the corporation from all further liability on account of the guarantied bonds of the Alexandria and Washington Railroad Company.

Whereas there is now outstanding and held against the corporation of Washington thirty thousand dollars of bonds or certificates of indebtedness, issued by the "Alexandria and Washington Railroad Company," the payment of which was guarantied by this corporation, under the requirements of the act of February 8th, 1855; and, as security against such guaranty, the said company executed to said corporation a certain deed of trust, dated April 19th, 1855, upon the said railroad:

Now, therefore, with the view of relieving the city from all further liability on account of its said guaranty—

Be it enacted, &c., That the mayor be and he is hereby authorized, upon the payment by Alexander Hay and Joseph Thornton of all of the said thirty thousand dollars of outstanding bonds or certificates of indebtedness, so guarantied by this corporation, together with the semi-annual interest thereon due on the first of July, 1862, and all interest since accrued to the date of said payment, to assign or transfer to said Hay and Thornton the said deed of trust or obligation, creating a lien in favor of this corporation against the said railroad, in such manner only, however, as to forever relieve the city from any further liability for or on account of such deed of trust, guaranty, or endorsement, including all attorney's or trustee's fees
110 growing out of such deed of trust or other obligation, and the assignment or transfer thereof.

Respectfully,

CHARLES H. UTERMEHLE.

Exhibit C.—No. 2.

AN ACT to extend the charter of the Alexandria and Washington Railroad Company, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the Alexandria and Washington Railroad Company be, and the same is hereby, authorized to extend their said railroad from the south side of the Potomac across said river, to and along Maryland avenue to the Capitol grounds, and across Pennsylvania avenue along First street to Indiana avenue, and thence to the Baltimore and Ohio depot; and that all the ordinary rights, privileges, and liabilities incident to similar corporations are conferred upon said company for that purpose: Provided, however, that the same shall be subject to alterations, amendments, or repeal: And provided further, that the cars shall not be drawn on the streets aforesaid, or on the structure across the Potomac river, mentioned in the second section of this act, by steam power, without the consent of Congress and of the corporate authorities of the city of Washington thereto: Provided, that said company shall be authorized to charge and receive rates of freights and fares not exceeding five cents for each person transported, and for each ton conveyed on the said road so extended; and provided, also, that no person shall be excluded from the cars on account of color.

SEC. 2. And be it further enacted, that the said company are hereby empowered to make an additional structure or passage-way along either side of the Potomac bridge, as may render the same safe for public use, and so as not to hinder the general use of said bridge for ordinary travel, which shall be ascertained by one or more experienced civil engineers, who shall report by proper surveys and estimates to the Secretary of the Interior for his approval; the whole cost of which surveys and construction of said additional bridge for the purposes aforesaid to be paid by the said company. And the said company shall construct such draws as shall correspond with those now in use on the said bridge, and of such model as shall 111 be determined by the Secretary of the Interior, and which shall afford reasonable facilities for navigation on the Potomac river.

Sec. 3. And be it further enacted, That the said company shall keep that portion of the avenues or streets occupied by their road in good repair, and provided with suitable crossways at the proper places, for vehicles and wheeled carriages, and for general use. The track of said road shall be laid as nearly in the centre of the streets and avenues through which it passes as may be, without interfering with the water mains and gas pipes; and the speed of travel shall be subject to such regulations as the corporate authorities of the city of Washington shall from time to time prescribe, under such penalties as the said corporate authorities shall impose: Provided, however, That the rights and privileges herein granted shall confer no authority or right to interfere with the United States'

military use or possession of said road, or contemplated extension, during the present rebellion, or to any claim for damages or indemnification therefor.

Sec. 4. And be it further enacted. That the said company may acquire and hold such real and personal estate as the practical use and working of said road may require, under such regulations, and subject to such taxation as is imposed by law on similar property located in the city of Washington.

Sec. 5. And be it further enacted, That this act shall take effect from the time of its passage.

Approved March 3, 1863.

Exhibit C.—No. 3.

OFFICE OF THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN RAILROAD COMPANY,
WASHINGTON, *April* 14, 1863.

SIR: This company has received your letter of the 8th instant, inclosing a copy of certain proceedings on the part of the city council, in reference to the claim of the corporation of Washington on the late Alexandria and Washington railroad, now the Washington, Alexandria, and Georgetown railroad, and of which I am president.

112 *City Ordinances.*

AN ACT to relieve the city of Washington from any further liability on account of the Washington and Alexandria railroad.

"Be it enacted by the board of aldermen and board of common council of the city of Washington, That there be and hereby is appointed a committee of two members from the board of aldermen and three members of the board of common council, who, in conjunction with the mayor, are hereby empowered to dispose of the city's claim on the Washington and Alexandria railroad to A. Hay and his associates upon the following terms, to wit:

"That the said Alexander Hay and his associates shall assume and pay the total outstanding liabilities of this corporation by taking up and providing for the payment of such guarantied bonds to the satisfaction of such bondholders, so that said bondholders shall release the city from all future liability to said bondholders, and each and all of said bonds be returned to the mayor of the city; and said Hay and associates will furnish certificates of stock to the corporation of Washington in said road (secured) to the amount already expended by the city in the payment of its guarantied bonds; such stock to be placed on the same footing with other stock in said road.

"Sec. 2. And be it enacted, That in case said committee do not effect such sale within the space of thirty days from the passage of this act, they are hereby empowered to take such steps as may be deemed necessary to secure the amount of the city's claim and to institute suit for that purpose; and said committee are hereby em-

powered to employ such counsel as may be necessary for a proper conduct of the city's suit.

"Sec. 3. And be it enacted. That if said committee deem it advisable they are hereby empowered to serve a written protest upon the Secretary of War and Quartermaster General protesting against any payments of money or recognition of the parties now claiming possession of said road.

"ALEX. R. SHEPHERD,
"*President of Board of Common Council.*
"JOSEPH F. BROWN,
"*President of the Board of Aldermen,*
"Approved April 4, 1863.
"RICHARD WALLACH, *Mayor.*"

113 I have delayed answering your communication until it could be duly considered by the board of directors of my company, who, after mature deliberation, instruct me to say to you that the terms submitted on the part of the corporation are wholly declined; and at the same to inform you that the proposition heretofore submitted on our part is withdrawn.

As this question will now most likely find its solution in the judicial tribunals I deem it proper in behalf of myself and the present company to state some of the reasons which prompt, and, I think, warrant our present course.

It will be remembered that myself and associates have at different stages of this transaction sought to relieve the city of any further liability on account of this road by assuming its deferred payments. We did this in every instance with a full knowledge that the deed of trust held by the city was null and void, for the double reason that the railroad, by its charter, and according to the laws of Virginia, had no right to issue such certificates of indebtedness in the manner, and at the time, it was done: and that the corporation of Washington had no shadow of authority by any of the delegated powers in the city's charter to endorse such certificates, or incur any such obligation, whereby an illegal charge and burden was inflicted upon the tax-paying people of Washington. But we believed that by getting our franchise extended across the Potomac, we could render our road more useful to the public, and hence more valuable to ourselves. We were, therefore, willing to take the future outstanding half of the certificates, so endorsed by the city, upon ourselves, and relieve its treasury from any further demands in that behalf.

This offer on our part, after being somewhat modified, was passed by the board of aldermen nearly one year ago; and being sent to the board of common council was referred to a special committee composed of Messrs. Thompson, Gordon and Utermehle, before which it was kept under consideration until about the 5th of January of the present year, when a majority and minority report were submitted; the former rejecting, and the latter proposing to accept the act past by the board of aldermen.

In an elaborate report signed by Messrs. Thompson and Gordon, as the same is published in the National Intelligencer of the 12th of January, filling some ten densely printed columns of that paper, these gentlemen, after a minute examination of all the transactions of their predecessors in office in relation to the endorsement by the corporation of these certificates, and its authority for doing so, conclude their investigation as follows:

114 "In concluding this report your committee will state that they have given the details of this affair that the board and community might be possessed of the essential facts connected with this gross misapplication of the city's funds. Every step taken seems to have been in violation of right. The council violate the charter to effect this guaranty; the committee violate the direction of the council, and the succeeding councils refuse to investigate it, and money is appropriated to pay interest on what the corporation does not owe."

This report was unanimously concurred in by the city council, which declares that the endorsement of these certificates by the corporation was a "violation" of the charter, and that the city does not, and never did, owe the debt thus attempted to be created.

Such, too, is precisely our view of the subject, and was our well-advised opinion at the time of our successive efforts to take the outstanding half of the illegal and ill-advised burden upon ourselves. We hoped by doing so to secure the good will of the people and corporate authorities of Washington in getting our franchises extended across the Potomac, thereby securing a valuable thoroughfare and public improvement, in which the citizens and city of Washington are equally interested. But we little expected, after the city council had by solemn act declared the whole action of the corporation in assuming to endorse these certificates to be null and void, would in the next breath demand of us to pay and be answerable for the whole amount of this so-called debt, "which the corporation does not owe," and as a means of extorting from us this sum to send a special committee before Congress to use their exertions to defeat the passage of an act of far more value to this community at large than to ourselves as individuals.

This proceeding on the part of the common council defeated every object we ever had in view in offering to assume any part of the indebtedness created by the city by its unauthorized endorsement.

We are now asked again by the ordinance which you enclose to pay the whole of this debt—although, as stated, you have declared it to be null and void, and its creation a violation of the city charter. You say we must pay the outstanding bonds, endorsed by the city, or secure them to the satisfaction of "such bondholders," &c. Do you know, or does your committee know, that there are no bonds, and never was? Certain papers called "certificates" were issued by James S. French upon which the mayor and register of Washington signed their names, and the mayor took some of them

115 to parties in this city and hypothecated them—receiving the

money himself; whether any of it, or what part of it went to the railroad is not known. But if it was known it could not render these papers of any greater validity.

You say we must then give the corporation "stock" in said road secured "for the remainder or cancelled portion of said bonds," (or rather certificates;) what kind of security you do not say, nor would it help the matter if you did.

We have only to say that the corporation of Washington has about as much right to incur the liabilities of a stockholder in this railroad as it had to make the first illegal endorsements of the certificates of the same, for it could not vote one dollar to pay the assessment of over thirty-three per cent. now voted or charged upon its capital stock of $300,000 to build a bridge over the Potomac now under contract, provided those who make this demand upon this company propose it should contribute its proportion of these charges, according to the stock you desire us to give; to do which, according to the city charter, would first require the approval of "two-thirds of the legal votes in the said city at an annual election."(—See sec. 10, city charter.)

If, on the contrary, it is not intended by the council that the city should pay its part as a stockholder in the road, as proposed in the ordinance before me, then the ordinance assumes the character of an exaction coupled with a meditated fraud and imposition on the holders of the remaining stock. No such terms can be accepted.

In the second section of the ordinance your committee "are empowered to take such steps as are necessary, and to institute suit," &c., unless we comply with this illegal and absurd demand within thirty days. You need not wait thirty minutes to bring suit, and this company will afford you all proper facilities in doing so.

By the third section of the ordinance you may, if you choose, "serve a written protest on the Secretary of War and the Quartermaster General, protesting against any payment of money, or recognition of the party now claiming possession of said road," &c. Such action is quite of the same character of a similar proceeding adopted to defeat the extension of our charter by Congress, and will most likely meet with the same success. If such is consistent with your sense of duty to the public or private interests involved in this important public work, it is not for us to object to it. We think we know our rights, and will pursue them according to their legal tenor, and shall encounter the obstacles thrown in our way by those who represent the corporation as best we can. Certain it is, we have met with nothing but abuse and denunciation so far, although
116 we are now, and for some time have been, expending large sums of money in an important public improvement, in the consummation of which, whatever may be our individual benefits, the corporation and business of the city of Washington will reap a still greater share of permanent gain.

We therefore decline the proposition submitted in the ordinance you enclose, because the corporation has no such rights as you have claimed, either in law or in equity; and that for the specific reasons:

1st That the corporation had no right or authority by virtue of any delegated power in its charter, to endorse or in any shape guaranty the note, certificate, or other evidences of indebtedness of the late Alexandria and Washington Railroad Company, or of any other corporation, foreign or domestic, and thereby create a charge and liability upon the city and a tax upon its people, as was done in this case; and that having no such power or authority by virtue of its charter, the corporation acquired no right by the pretended deed of trust dated the 19th of April, 1855. which is therefore null and void.

2d. That the late Alexandria and Washington Railroad Company had no right at the time this pretended deed of trust was executed to borrow money, and there being no such authority delegated in the charter of the road, the code of Virginia was not complied with, nor had James S. French, the then president of the said road, power or authority by any act of its board of directors to execute such deed of trust, nor was such deed of trust ever approved by the board of directors of said road after it was executed; for which reasons and because of which fact the said deed of trust was and is null and void "ab initio," and could and did vest no right whatever, in law or in equity, in the corporation of Washington.

3d. In point of fact there was no such borrowing money for the use of said road as is contemplated and specified in said deed of trust; on the contrary, certain certificates to the amount of $60,000 were executed by James S. French, in the name of the Alexandria and Washington Railroad Company, and being signed by the then mayor of Washington, part of the same were by him hypothecated with certain parties, and the proceeds were receipted for by the mayor, and there is nothing to show that any, or what part of the same, ever went to the benefit of the road; which proceeding was in violation of the covenants and intent of the said deed of trust, and was a fraud upon the stockholders and creditors of said road.

For the foregoing, and other reasons that might be stated, we regard the claim set up by the corporation as illegal and void, and must therefore respectfully decline the demand set forth in
117 the ordinance you have submitted as being equally unjust and impracticable.

With all due consideration and respect, I am

Your obedient servant,

ALEXANDER HAY,

President W., A. & G. R. R. Co.

To A. C. Richards, esq., secretary of joint committee of the Common Council of the city of Washington, D. C.

Exhibit D.—No. 2.

WAR DEPARTMENT, OFFICE OF MILITARY DIRECTOR AND SUPERINTENDENT RAILROADS UNITED STATES,
Washington, April 6, 1863.

Hon. Edwin M. Stanton, Secretary of War:

SIR: In compliance with your order of January 29, 1863, I have the honor to submit herewith a statement of the cost of reconstructing the Washington, Alexandria and Georgetown railroad. The work having been nearly completed before I entered the service of the government, much time has been expended in investigating and arranging the account. The whole amount chargeable to the Washington, Alexandria and Georgetown Railroad Company is $85,612 72.

Where vouchers could not be found chargeable directly to the work, estimates of the cost have been made by A. Anderson, chief engineer United States military railroad, Virginia.

The switches and turnouts, their lengths and cost, have been estimated separately.

I have the honor to be, sir, very respectfully, your obedient servant,

(Signed) D. C. McCOLLUM,
Col. and M. D. Supt. R. R. U. S.

118 *Statement of the cost of reconstructing the Alexandria, Washington and Georgetown railroad by the United States government, under an order from the War Department, dated the 11th day of January, 1862.*

Voucher.	Remarks.	Amount.
1.	W. C. Quincey, check roll, track force, Maryland avenue	$184 35
2.	Do do do do	249 85
3.	Do do do do do	153 09
4.	Do use of engines and men, Baltimore and Ohio railroad	55 00
5.	Do cross ties from John H. Inglehart	69 00
6.	F. Miller, freight, steamboat Thomas Colyer	2 70
7.	E. B. Churchill, check roll, carpenters, (January, 1862)	403 82
8.	Jas. Williams and Jas. Whitaker, services	9 00
9.	Geo. Wells, cross ties	472 75
10.	C. W. Buckingham, expenses forwarding men from Baltimore	15 00
11.	E. A. Trowbridge check roll	150 98
12.	S. H. Lany do	269 00
13.	John Moorehead do	650 89
14.	W. E. Freeman do	348 79
15.	Robert Miller do	186 71
16.	—— Mitchell do	205 10
17.	Edward Nolan do	286 00

Voucher.	Remarks.	Amount.
18.	John Dunlap ..... do check roll	$121 00
19.	S. H. Wood et al ..... do	146 45
20.	John Robinson ..... do	174 95
21.	Daniel Rankin ..... do	192 77
22.	Edward H. Bulgrains ..... do	184 50
23.	James Brooks ..... do	101 60
24.	Robert McIlvaine ..... do	116 40
25.	E. B. Kellum ..... do	22 73
26.	S. H. Wood ..... do	172 27
27.	Lewis Mershon ..... do	301 62
28.	James Brooks ..... do	286 50
28½.	Lewis Mershon et al ..... do	647 42
29.	John Wheelan ..... do	180 75
30.	S. H. Lamey ..... do	256 18
31.	E. A. Dayton ..... do	718 73
32.	John Paul et al ..... do	227 14
33.	James Hartley ..... do	298 55
34.	Charles Schneider ..... do	77 43
35.	E. A. Trowbridge ..... do	144 87
36.	—— McGregory et al ..... do	12 90
37.	Edward Githings et al ..... do	148 00
38.	E. Belgains et al ..... do	180 55
39.	P. R. McDonald ..... do	404 53
	40. Morty Maher ..... do., Maryland avenue	140 58
119	41. ——— Dunlap ..... do	227 52
	42. John Moorhead ..... do., 1st street near B. & O. depot	236 33
43.	Patrick Gallagher ..... do., Maryland avenue.	82 80
44.	Charles Schneider ..... do	187 69
45.	Discharged men ..... do	129 47
46.	Do ..... do	361 74
47.	Do ..... do	300 77
48.	P. Gallagher ..... do., Maryland avenue.	572 65
49.	Do ..... do., Maryland avenue.	54 35
50.	John Moorhead ..... do., siding near B. & O. depot	261 19
51.	E. H. Belgians ..... do	154 89
51½.	James F. Carlin ..... do	148 14
52.	Patrick Gallagher ..... do., Maryland avenue.	352 14
53.	Mrs. Inderman, boarding men	259 50
54.	Blood & Hatch, hauling materials	87 50
55.	Walter Thompson ..... do	67 50
56.	Transportation of men brought from Lebanon, Pennsylvania	91 80
57.	W. W. Wright, services as engineer for January.	126 00
58.	W. H. Bradley, services as manager	241 75
59.	Clagett & May, blankets	201 50
60.	Miles Doolin, labor	9 66

Voucher.	Remarks.	Amount.
61.	Samuel A. Power, expenses	$25 55
62.	W. W. Wright ..... do	34 75
63.	E. Sankey ..... do	70 00
64.	David Mitchell, jr., assistant engineer	174 00
65.	Richard Delhay, laborer	6 75
66.	Michael Lahy ..... do	11 02
67.	John L. Daley ..... do	24 75
68.	James Ryan ..... do	6 55
69.	E. Sankey, supplies	108 00
70.	A. C. Hawkins, hauling supplies, &c	112 00
71.	W. W. Wright, services as engineer, February	168 00
72.	C. C. Anderson, blacksmithing, Maryland avenue.	5 12
73.	Thomas Farely, laborer, Maryland avenue	2 10
74.	John H. Taylor, provisions for night gang, Maryland avenue	1 25
75.	Walter Katte, services engineer, Maryland avenue.	50 40
76.	Patrick Gallagher, expenses	1 00
77.	John Morgan, services as assistant engineer	24 00
78.	Walter Thompson, hauling	117 50
79.	W. C. Robinson, canal boat	144 00
80.	Henry Crasby, supervisor	32 19
81.	Lewis Mershon, services and expenses	47 35
82.	W. W. Wright, expenses	30 75
83.	William H. Bradley, check roll	437 41
84.	Do ..... do	351 24
	85. Robert Miller .. do	92 47
120	86. Robert Miller .. do	170 27
	87. Wm. B. Fitzpatrick, .. do	405 86
88.	Patrick Enright ..... do	224 25
89.	John McMahon ..... do	357 32
90.	P. K. McDonald ..... do	520 36
91.	Do ..... do	353 28
92.	Do ..... do	119 47
93.	E. B. Churchill ..... do	318 00
94.	Edward Nolen ..... do	364 63
95.	John Paul ..... do	393 90
96.	Mulligan & Maher ..... do	695 53
97.	Henry E. Gray ..... do, cutting brass dies.	303 75
98.	Do ..... do	543 25
99.	S. R. Wood ..... do	56 48
100.	Philip Dooley ..... do	318 25
101.	John Seagar ..... do	169 84
102.	John B. Ward, lumber for shanties	231 35
103.	James E. Day, expenses	13 40
104.	Do., services as assistant engineer	124 00
105.	Blood and Hatch, hauling lumber	45 00
106.	George Woodiman, hauling iron, Maryland avenue.	37 50
107.	Henry Crasby, services, supervisor	63 00

Voucher.	Remarks.	Amount.
108.	James J. Moore, expenses	4 75
109.	T. J. Bell, check roll near Baltimore & Ohio depot.	120 00
110.	T. J. Bones, services and expenses	32 50
111.	W. H. Brown, expenses	3 40
112.	T. H. Tedro ....do	6 00
113.	G. B. McGregory, services getting cross ties	94 50
114.	Walter Katte, services	75 00
115.	John Morgan ....do	129 00
116.	John T. Wallace, cross ties	700 00
117.	W. H. Bradley, discharged men	7 10
118.	David Mitchell, expenses	23 00
119.	Henry Gilbert, axes got in October, but used on W. & A	7725
120.	Green and Williams, blankets	135 00
120*a*.	Morty Maher, discharged men	8 12
120*b*.	John Paul, Com ....do	25 20
120*c*.	Philip Dooley ....do	35 32
120*d*.	Robert Miller ....do	29 02
120*e*.	John McMahon ....do	64 80
120*f*.	Edward Nolen ....do	12 82
120*g*.	E. B. Churchill ....do	75 50
120*h*.	W. B. Fitzpatrick ....do	91 06
120*i*.	Henry Crasby ....do	43 74
j.	John Seager ....do	15 30
k.	P. R. McDonald ..do	14 40
121	*l*. G. B. McGregory, check roll	24 75
	121. Mrs. Inderman, boarding, February	32 00
122.	James B. Leach, cross-ties	458 50
123.	J. W. Martin, blacksmithing, Maryland avenue	43 19
124.	C. C. Anderson, ...do.	20 00
120.	Rob't Miller, check roll, repairing and maintaining track M'rch	85 50
130.	James F. Carlin, tools	192 62
131.	John J. Paul, expenses	15 40
132.	Kelleher & Pywell, livery bill	95 00
133.	John Linton, services	120 00
134.	Do. expenses	12 45
		$23,882 60

Widening cuts and embankments, gravelling, filling track and ditching, with gravel train, after track was laid, not included in preceding account 2,500 00

Preparing road bed and laying track from Sixth street crossing to Baltimore and Ohio Railroad, as follows:

Grading for and laying main track, and paving streets $1,290 00

Grading for and laying Maryland avenue siding	$496 00	
Trestle bridge over canal, Maryland avenue	300 00	
Additions to and improvements of trestle work near Baltimore and Ohio railroad depot	600 00	
Trestle under arch culvert, street near Baltimore & Ohio Railroad depot	100 00	
Planking street crossings	200 00	
	2,986 00	
Deduct from this sum ($2,986 00) the check rolls and bills of W. C. Quincey, Nos. 1, 2, 3, 4, and 5 of preceding account, which were for expenditures in part for same work,	711 29	
		$2,274 71
Labor and materials, making and planking road crossings between Alexandria and Sixth street, Washington		400 00
15,835 cross-ties, in addition to those embraced in preceding list of accounts, at 35 cts. each		5,542 25
625 tons, 695 lbs., rails, at $35 00		21,885 85
3,340 chairs, at 36 cts. each		1,202 40
39,900 pounds spikes, at 3¼ cts.		1,296 75
17 frogs and switches, at $75 each		1,275 00
Freight on 625 tons, 695 lbs. rails, at $10 64		6,653 60
Freight on 68,290 pounds chairs and spikes, at 47½ cts. per 100 pounds		324 37
13,106 rations for men employed on work, at 30 cts.		3,931 80
18 tons, 1,365 lbs., guard rails, and laying do. at $55 00		1,023 51
122 Cost of materials for track across Long Bridge, 62 tons, 1,520 lbs., rails, at $45 64, including freight	2,860 65	
334 chairs, at 36 cts.	120 24	
4,000 lbs. spikes, at 3¼ cts	130 00	
Freight on 6,789 lbs. chairs and spikes, at 47½ per 100	32 24	
2,340 cross-ties, at 35 cts.	819 00	
		3,962 13
Total		$76,154 67

Statement of length and cost of the tracks laid upon the Alexandria, Washington and Georgetown Railroad, for which the sum of $76,154 67 *was expended as per statement, as follows:*

Remarks	Miles.	Feet.	Cost.	Amount.
Main track, (single,) not including Long Bridge	6	3,372	$55,382 16	
Track across Long Bridge		4,680	6,643 47	$62,025 63
Single main track, including Long Bridge	7	2,772		
Spur track, junction with Alexandria, Loudon and Hampshire Railroad		1,220	1,738 50	
Fort Runyon spur track		520	731 00	
Fort Jackson siding and span		2,503	3,568 77	
Maryland avenue principal siding		5,211	7,445 82	
Maryland avenue crossings, (4 of them)		454	646 95	14,129 04
Total cost of main track, sidings, &c., included in the foregoing statement				76,154 67
Sidings, crossings, &c., the cost of which is not included in the above sum of $76,154 57:				
Henry street siding, left hand track, Alexandria		2,924	3,947 40	
Henry street siding, right hand track, Alexandria		1,866	2,520 10	
Henry street crossing, from main track to left siding, Alexandria		113	152 55	
Maryland avenue warehouse siding, Washington		1,350	1,822 50	
Spur track to Baltimore and Ohio Railroad passenger house		677	1,015 50	9,458 05
Total				$85,612 72

123 Endorsement: No. 56—Equity.—Washington and Alexandria Railroad Company vs. Mayor and Corporation of Washington, and J. H. and A. T. Bradley, trustees, &c. Filed September 12, 1863.

Exhibit E.—No. 2.—Advertisement of sale of road.—Trustees' sale.—Alexandria and Washington Railroad.

By authority of a deed of trust, executed to us by the Alexandria and Washington Railroad Company, bearing date the 19th day of April, 1855, and recorded in the county of Washington, and District

of Columbia, in Liber, J. A. S., No. 96, folios 367, 368, 369, 370, and 371, one of the land records for said county, and by the request in writing of Richard Wallach, esq., mayor of the city of Washington, addressed to us, we will, on Wednesday, the 16th day of September next, expose for sale, at public auction, the road made and to be made by the said Alexandria and Washington Railroad Company, including the right of way and land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used thereon, or procured therefor, including the iron rails and other materials for the construction of said road, and all bridges, viaducts, culverts, fences, depot grounds, and buildings thereon; engines, tenders, cars, tools, materials, contracts, and all other personal property; and all right, immunities, and franchises of the said Alexandria and Washington Railroad Company, in, to, or concerning the said premises.

The sale to take place at 12 o'clock, meridian, at the court-house in Alexandria.

The terms of sale to be: One-tenth part cash; the residue to be paid in ten equal instalments, with interest from the day of sale every six months from the day of sale. The deferred payments to be secured to the satisfaction of the trustees.

JOS. H. BRADLEY,
A. THOS. BRADLEY,
Trustees.

Aug. 13—eod&ds.

124 *Order of hearing.*

I appoint Monday next, the 7th of September, 1863, at 11 o'clock, for hearing the within prayer for injunction, provided this bill be filed in due time, and not less than four days' notice of the said hearing be given to the defendants or their solicitors.

(Signed,) ANDREW WYLIE.

Sept. 1, 1863.

Service of notice acknowledged.

(Signed,) JOS. H. BRADLEY,
Att'y Corp. Wash.

And for the trustees,

J. H. BRADLEY,
A. T. BRADLEY.

Process.

The President of the United States to the Mayor and Corporation of Washington city, and Joseph H. Bradley and A. Thomas Bradley, greeting:

Whereas, on the 2d day of September, 1863, the Washington, Alexandria and Georgetown Railroad Company filed their bill in the Supreme Court of the District of Columbia against you, praying

relief touching the matters therein mentioned, and especially, for certain reasons in said bill set forth, praying that you may be enjoined and restrained by the said court from further advertising for sale, and from making a sale of said railroad, under and by virtue of a deed of trust executed on the 15th of April, 1855, by said railroad company to you, said Joseph H. and A. Thomas Bradley, as trustees; and the chief justice of said court, on the day aforesaid, granted his fiat for said injunction until otherwise ordered by the court, on complainants' giving bond in the penalty of ten thousand dollars, conditioned according to law; and said bond has, this 15th day of September, been executed and filed in the clerk's office of said court, and duly approved by the said chief justice:

You are therefore hereby commanded and enjoined, as are all your agents and representatives whatsoever, under the lawful pains and penalties, from henceforth that you do desist from further advertisement of said road for sale, and from selling said road according to your advertisement heretofore published, until further order of said court.

125 Witness David K. Cartter, chief justice of said court, the 15th of September, 1863.

Service acknowledged.

R. J. MEIGS, *Clerk.*
J. H. SEMMES,
Acting Mayor.
JOS. H. BRADLEY,
A. THOS. BRADLEY.

Endorsement: No. 56. Equity. The Washington, Alexandria and Georgetown Railroad Company, &c., against the mayor and corporation of Washington, and Joseph H. Bradley and A. Thomas Bradley. Writ of injunction issued September 15, 1863. Returned into clerk's office, September 28, 1863. Enjoined all. W. A. Lamon, Marshal. September 21st, 1863.

Injunction ordered.

Let an injunction issue until otherwise ordered by the court, on the complainant's giving bond in the penalty of ten thousand dollars—conditions according to law.

September 9, 1863.

D. K. CARTTER,
Chief Justice.

In the Supreme Court of the District of Columbia.

Answer of trustees.

JOSEPH H. BRADLEY AND A. THOMAS Bradley, *vs.* THE WASHINGTON, ALEXANDRIA AND Georgetown Railroad Co. } In equity.

These defendants answering say, they are trustees with a power as set out in the deed of trust to them exhibited with said bill; but they

have no interest in the event of this suit, save as appears by said deed.

They have no personal knowledge of any of the matters mentioned in said bill, and the answer of the corporation of Washington, save these.

126 They admit the execution of the deed of trust to them by the said Alexandria and Washington Railroad Company, and they say the same was duly recorded.

They admit that they were required by the mayor of the city of Washington to sell under said deed, and they say they advertised the same for sale, as stated in the bill.

They admit that one of them, to wit, the said A. T. Bradley, attended the sale advertised by Joseph B. Stewart, as trustee, and requested him to give notice of the said deed of trust so held by them; and they say the said Stewart did give said notice at said sale.

And having fully answered the said bill, they pray to be hence dismissed with their cost.

JOSEPH H. BRADLEY.

Endorsement: No. 56. Equity. Joseph H. and A. Thomas Bradley against the Washington, Alexandria and Georgown Railroad Company. Answer. J. H. and A. T. Bradley, trustees, &c. Filed December 14, 1863.

Answer of the corporation.

THE MAYOR, BOARD OF ALDERMEN, and Board of Common Council of the city of Washington,
vs.
THE WASHINGTON, GEORGETOWN & Alexandria Railroad Company.

The answer of the mayor, board of aldermen, and board of common council of the city of Washington, impleaded with Jos. H. Bradley and A. Thomas Bradley, to the bill of complaint of the Washington, Georgetown and Alexandria Railroad Company.

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit of saving, exception, and advantage to the manifold errors, uncertainties, and insufficiencies of the said bill of complaint, for answer thereto, or to so much and such parts of the same as they are advised it is material, necessary, competent or proper for them to answer unto, answering say:

They do not admit that the complainants are a body corpo-
127 rate, created by the legislature of the State of Virginia, by the act of the 27th February, 1854, exhibited with said bill; that under and by virtue of said act the said company was duly organized as required by law; that by the act of the corporation of Washington referred to in said bill, dated 27th July, 1855, the said company was authorized to make their road from the Potomac river to the Baltimore and Ohio railroad depot.

The defendants admit that a corporation called the Alexandria and Washington Railroad Company was created by the said act of the legislature of Virginia, and power was given to the said company to extend their said road, by the said act of the corporation of Washington; and they say in point of fact, that the said railroad company did extend their said road from the Potomac river to the said depot; but they deny that the complainants had any rights under the said act either of them, or otherwise, in said charter or said roads.

These defendants are not advised save by the said bill, and do not admit the fact to be so, that the limitation on the powers of incorated companies, quoted in said bill, (pages 1 and 2, printed copy,) applied to the said complainants; and complainants are required to prove the same as an existing law of the State of Virginia, and to show that the same applies to them, if they deem the same material to their case.

These defendants, upon informantion and belief, deny as is stated in said bill, "that James S. French subscribed for 1,000 shares of said stock (i. e. stock of said company,) and Walter Lenox subscribed for five hundred shares; and that George French, the brother of said James, subscribed for five hundred shares; making in all two thousand shares of the stock, which was subscribed and controlled by these parties, but who never paid up any part of said subscription, excepting two dollars per share at the time of and to make good their subscriptions." To the contrary thereof, these defendants say they have been informed that the amount of said stock necessary to the formation of said company was bona fide subscribed for by divers persons who fully complied with all the requirements of the said charter, and duly organized the said company with the proper officers, in the manner and form prescribed by their said charter.

These defendants have no knowledge of the facts whether the said James S. French, as president of said road, acting by the authority of said company, proceeded to make large contracts for material and work to be performed in the construction of the said road, but they believe and admit the same to be true; whether he did or did not give the written and verbal promises and stipu-
128 lations of said road to pay for the same, these defendants do not know, nor are they advised save by the said bill, and do not admit, but deny the same to be true.

These defendants admit in substance in reply to the article of said bill marked 7, (p. 2 of printed copy,) that an agreement was made between the said railroad company and these defendants, through an ordinance passed by them on the 29th January, 1855, by which these defendants undertook to guaranty the payment of the sum of $60,000, which the said complainants proposed to borrow on the credit of the said guarantee, and the collateral security of a deed of trust to be executed by complainants, conveying all their property and franchises to indemnify these defendants, and to secure the payment of the said debt and interest; a true copy of the said ordinance is exhibited with said bill, marked B.

They deny that the said James S. French, of his own motion and

pretending to act in the name of said railroad company, proceeded to issue and execute various and sundry certificates, and to sign the same as president, without the approval of the board of directors of said company, as to the form and substance of said certificates, and as to his authority to do so, and without the approval of the directors of said road after the same were so drawn; and they say they had exhibited to them at the time the said agreement was made, ample and full proof that the said agreement was made by authority and direction of the board of directors of the said company; and the certificates of indebtedness given for the purpose of borrowing said sum of money were in fact made by authority and direction of said board, although they did not bear the corporate seal of said company, as is truly said in said bill; and these defendants are advised and will maintain that the corporate seal was wholly unnecessary to their validity and binding force on said company. They admit that complainant's ex. C is a true copy of one of said certificates.

They admit that the said certificates after they were prepared, were endorsed as shown by ex. D.

They deny and say it is not true that the said James S. French, further acting without the approval or authority of the board of directors of said railroad company, or their expressed authority so to do, did of his own motion proceed to execute a deed of trust to the defendants, Joseph H. Bradley and A. Thomas Bradley, for the alleged purpose of securing or indemnifying the said corporation of Washington for its endorsement of said certificates as is falsely alleged in said bill. To the contrary thereof, they aver that the said James S. French, acting by the express authority of said board
129 of directors, executed the deed of trust, a true copy whereof is exhibited with said bill and marked E, and they confidently affirm and rely on the validity of the said deed as their only security.

These defendants have no knowledge, and at the time of the execution of the said deed had none, of the condition of the affairs of said company, but they had full assurance from the agents of the said company and by the exhibition of the state of their affairs at that time, that, with the said $60,000 so to be guarantied by these defendants, the said company would be able to complete the said road, and their said agreement was based altogether on the representations, statements and evidences furnished to them by said railroad company to that effect, and without which they would not have guarantied the payment of said debt. Whether said representations were or were not false and fraudulent, or true, is not material to this matter, as they are advised, and if it is material or proper to the complainants' case, the facts must be proved, for these defendants deny that the facts stated in said bill, in that particular, are true.

And these defendants deny thatthey or their agents were in anywise charged or chargeable with seeing to the application of the proceeds of said loan.

It is not true, as stated in said bill, that the said certificates, when so endorsed by the mayor and register of the city of Washington, were not delivered to the said railroad company; to the contrary,

they aver they were delivered to the said company through its agents duly authorized to receive them. These defendants, having endorsed and delivered the said certificates in good faith to the said company, have no knowledge of what became of them, except as to the amount and sum of say $47,000, which with the knowledge and approval of Mr. J. T. Towers, the then mayor of said city, were hypothecated with Riggs & Co., to borrow money under the said agreement of guarantee, of which that house was fully cognizant, and the proceeds thereof were, from time to time, paid by said Riggs & Co. to said railroad company, and it is not true, as stated in said bill, the whole proceeds, nor was any part of them, taken charge of by the said mayor, or received by him in the name of the said corporation; nor was the money lent to these defendants, nor did these defendants know how the same was entered on the books of said Riggs & Co.

It is not true, as stated in said bill, that the said deed of trust was not delivered to these defendants, but was left in the hands of said James S. French, nor did he keep the same in his private possession for about two years; to the contrary thereof, these de-
130 fendants aver that the said deed of trust was on the day of its execution delivered to them, and they inadvertently caused it to be recorded among the land records of this county, as will appear by a true copy herewith filed, marked "Dep. C. of W. 1," and made part of this answer. It escaped their attention until the controversy with Fowle, Snowden & Co., mentioned in said bill, arose, and then it was sent to Alexandria.

It is true, as stated, that prior to the recording of said deed in Alexandria the said railroad company executed another deed of trust to secure Fowle, Snowden & Co., which was recorded in Alexandria; complainants well know, and the fact is so, that said last mentioned deed was made with full notice of, and subject to, the said trust deed so as aforesaid executed to secure these defendants. Whether the said railroad company had or not at that time contracted a large amount of debts, or whether they had or not borrowed money from Alexander Hay and others, these defendants do not know; they do not admit the same to be true, and require proof thereof, if it is material.

These defendants admit it to be true that by an act of the State of Virginia the said railroad company was empowered to raise money to the amount of $100,000 on these bonds; that Benjamin Thornton, of England, purchase $30,000 of those bonds; that the said company executed the deed of trust marked "exhibit F."

They do not know what the said company did with the money procured by the sale of said bonds, but the said road was completed, and engines were run on it somewhere about the 1st of January, 1858; and from that time forth till the breaking out of the rebellion, they continued to work the said road.

It is true the said company never has paid the first dollar of principal or interest of the money so obtained by them on the said guaranty of the defendants, but it is not true that the said company ever, at any time or in any manner or form refused to pay any part

of the interest due on said certificates, or repudiate or disregard them, or deny that they were legal debts and obligations binding on said company; to the contrary thereof, they, in the most solemn manner, did recognize their validity and binding force, as these defendants are well able to prove.

These defendants have no means of knowing how far the said railroad company paid its debts or the interest, nor whether they ever refused to issue stock to its creditors, nor whether it continued in open disregard and default of all its obligations; but they have been informed, and believe it to be true, that all its earnings were absorbed in keeping the road and rolling stock in order and
131 paying its debts, insomuch that its officers were not paid, and its stockholders received not benefit; but it is absolutely untrue that the creditors and proper owners were kept at bay and defiance under shelter of the said deed of trust executed to secure these defendants, and it is absolutely untrue that these defendants were advised of the defaults and neglects of said company, as charged in said bill.

It is true they quietly paid the debts they had guarantied as aforesaid, and did not order a sale of the trust property. And they had good and sufficient reasons for not ordering the sale, for they were advised that they had no power to purchase; that to order a sale when the road was in an unfinished state and the rolling stock very incomplete would sacrifice their security; that there were men, and among them the very men who have since become the purchasers, ready, waiting and anxious to have the sale made that they might purchase at a great sacrifice; whereas if these defendants waited until the road was established, (and it was represented to them as becoming every day more and more secure,) their secuaity was every day becoming better and better, and the ability of the company to meet the demands upon it increasing. Yet there was nothing at any time to have prevented other creditors from enforcing a sale, either subject to these defendants' prior lien, or to apply the purchase money in the first place to the liquidation of these demands.

It is true, as stated in said bill, that the said Fowle, Snowden & Co. attempted to enforce their said deed of trust in the Circuit Court of Alexandria, and in that litigation the priority of the said deed of trust to secure these defendants was established.

These defendants do not understand what is meant by the allegation twenty-one, on the sixth page of the printed copy of said bill, to wit: "That all this time the said Hay and others entitled to a portion of the stock and interest in said road, were refused all rights whatever," as these defendants have never heard of such title. If it is meant that Hay "and others" were creditors, these defendants know nothing of the fact, and do not admit but deny it, and require proof thereof. Nor have these defendants any knowledge or information, save by the said bill, that various parties who had furnished material, capital and labor for said road were pursuing their respective actions at law, with the desire of getting judgments and selling said road under execution. These defendants had no notice of any

judicial proceedings against said company, except in the said case of Fowle, Snowden & Co., and there they became parties and asserted their rights. Certain it is, they never interposed any kind of obstacle to the remedial process adopted by any other creditor of said
132 company. Nor have they any knowledge or information save by the said bill, that any judgements were obtained against the said company, or that said Hay "and others" came forward and paid off the said judgments and took assignments of the same; and so far as the said facts are material to this case, these defendants deny the same, and require the complainants to prove the said facts, and to show when and upon what consideration, respectively, said Hay and others paid off and took assignments of said judgments.

Those defendants have no knowledge or information, save by the said bill, and they deny the same, that the present rebellion in the State of Virginia prevented the said Hay "and others" from proceeding to have the said road sold under some one of the nine executions issued for that purpose, or that any executions were issued for that purpose; but they believe it is true that sometime in the spring or summer of the year 1861, the said James S. French, (whether his co-directors acted with him or not they do not know,) joined in the said rebellion, and took away such of the engines and rolling stock of said road as could conveniently be removed; but they have never heard what disposition was made of it.

These defendants have no knowledge whether the coupon on said $30,000 of bonds were or not paid.

Nor have they any knowledge whether said Thornton was or not compelled to call on Lenox to execute his said deed of trust. They admit that said Lenox went to the south in the year 1861, as they are informed and believe. These defendants have heard that said Benjamin Thornton did petition the County Court of Alexandria, it being a court of record, to substitute and appoint a new trustee in the place of said Lenox, and they have also been informed that said court did proceed to put Jos. B. Stewart, esq., in the place of said Lenox, but they are also informed that the proceedings therein were wholly irregular and insufficient to bind any parties, and that the same are nugatory and void, and when the record of said cause shall be exhibited to this court they will pray leave to point out the said errors and insufficiencies, but they do not admit, to the contrary they deny, the exhibit A, p. 13, to be a full copy of the proceedings in the said cause, and require full proof thereof.

In answer to so much of said bill as charges that said Alexander Hay made any propositions to these defendants, relating to the adjustment, liquidation and settlement of the claims of these defendants, under and by virtue of their said guarantee and said deed of trust upon the said railroad company, these defendants say that every such proposition was in writing, and all the acts and proceedings of these defendants relating thereto were also in writing, and
133 they file herewith as part of this answer, true copies of all such papers marked "Def't Ex.—." These papers speak for themselves, and are to be interpreted by this court, and neither

any false gloss or imputation of motive, made or pretended, by either party can change or qualify them. They forbear to scrutinize the acts of the said Hay, to find motives for his conduct, and they equally forbear to enlarge upon their own motives, as they assume that whether they were mistaken or not, it will be inferred in their favor by the court that they acted therein as public agents charged with a public duty, and that until the contrary is shown no harsh language can deprive them of the presumptions in favor of the acts of such agents.

But if any matters outside of the actual propositions made by said Hay, and the final action of the city councils thereon shall become the subjects of investigation in this cause, they are fully prepared to show and prove circumstances attending or accompanying the said propositions, which fully justified the said action of the said councils from time to time, and they pray leave, if an opportunity shall be offered, to present and prove the said facts and circumstances according to the usage and practice of this court. And they further say, in point of fact, that they have hitherto paid all the interest and all the instalments of the principal of said debt guarantied as aforesaid by them punctually, so far as the said certificates have from time to time been presented to them for payment, and they deny that they have at any time or in any manner repudiated or refused to pay the same.

And further they aver, and offer themselves ready to show and prove, that if the said Alexander Hay and his associates did at any time or times make any advances or lend any money to the said Alexandria and Washington Railroad Company, such advances and loans were in fact made after the execution of the said deed of trust to secure these defendants as aforesaid, and after the same was made and delivered, and with full knowledge of the said contract or agreement between the said railroad company and these defendants, and of the existence of the said trust deed; and that in point of fact the purchase of the said judgments against the said railroad company, and of other outstanding demands on said company were made by said Hay and his associates, with the like full knowledge, and they pray that these allegations may be taken as a cross-bill, and that said complainants be required to answer the same as though a bill had been filed against them for that purpose.

These defendants are ignorant of the facts, and equally so
134 of the meaning of article marked 27, on page 8 of said bill, and therefore pray to be excused from answering it.

They have already answered articles numbered 28 and 29. They do not know when or how the said Hay and his associates, nor are they advised of the fact, that they did take possession of said road, or that they made any arrangements to repair and equip the same, and they deny the fact to be so. They believe it to be true, and state that the War Department took possession of the said road, and proceeded to put the same in working order. Whether they made any arrangements with Hay and his associates in relation to the same these defendants do not know, nor do they [illegible] how they are to be affected thereby if any such were made.

These defendants admit the interview and communication stated in article No. 31 and ex. 9 to be true. They also admit ex. H, but deny that they are affected thereby.

But it is not true, so far as these defendants are informed, that said Hay and his associates, pending this controversy, or at any other time, caused the said road to be thoroughly reconstructed and relaid with new iron, and put in good running order; and they are advised, in point of fact, that the said road was reconstructed and relaid by the War Department, and the old iron was seized and sold by the said Joseph B. Stewart and Alexander Hay and others, with full knowledge of the existing claims of these defendants; and after this they are informed, and believe it to be true, that the said Joseph B. Stewart, claiming to act under the said pretended decree in the place of said Walter Lenox, advertised the said road for sale on the 10th day of April, 1862, and the same was then sold, and purchased by said Alexander Hay and his associates. What their claims and interests were these defendants do not know, and require proof thereof. But these defendants call attention to the significant fact that the said road, as stated in said bill, after the same had been thoroughly reconstructed from end to end, and relaid with new iron and put in good running order, and after, as these defendants say, it had been in successful operation for some time, sold for only $12,500.

It is true that the said A. Thos. Bradley, one of the defendants in this cause, appeared and requested Mr. Stewart, who acted as auctioner in his own person, to give notice, and Mr. Stewart did, as such auctioneer, give notice at the time of said sale, and either before the bidding commenced, or while it was going on, of the said deed of trust to secure these defendants.

Whether by the laws of the State of Virginia made part of the charter of said company, and the said sale so as aforesaid
135 made by said Stewart, the said railroad was or not dissolved, and the purchasers made a corporation, these defendants are not called upon to say, for the franchises and property of said company would still be subject to the trusts of the said deed to the said Bradleys; but they are advised, and so advised they say, that the said railroad company never has been dissolved, but its franchises and property remain.

These defendants are informed, and believe it to be true, that after the said sale the said purchasers had a conveyance executed to them by said Joseph B. Stewart, as appears by their ext., p. 11, which they admit to be a true copy.

They have no knowledge of any proceedings of the said pretended company called the Washington, Alexandria, and Georgetown Railroad Company, and do not admit but deny the corporate existence of any such company.

They admit the passage of the act of Congress which in said bill is designated as House Bill No. 468.

They admit also the two reports, to wit: ex. A, No. 2, and B, No. 2, and the act ex. C, No. 2.

They have no knowledge of the complainants having made any contract for the construction of a bridge across the Potomac; but admit the same to be true.

They admit also ex. No. 2.

They know nothing of the purchase of any real estate by the complainants; nor of the account against them furnished by the United States for material and repair of said road under any agreement between them and the Secretary of War in the fall and winter of 1861; nor can they understand how any such account and agreement could exist against or with a company not brought into existence until the year 1862. If it was as stated at first, an individual obligation on the part of said Hay and his associates, while they were yet strangers to the original corporation, and is now made out as against this new pretended company, it is purely a voluntary matter, accruing to the benefit of the creditors of the said original corporation.

These defendants know nothing of the account stated in article 46; but the complainants have failed to show the per contra in the earnings of the road.

It is true, as stated in article 49, these defendants did give orders to the said Joseph H. Bradley and A. Thomas Bradley to sell the said road; and the said trustees did advertise the same for sale, to take place on the 16th day of September last past, at the court-house in Alexandria, and ex. E, No. 2, is a true copy of that notice. And these defendants having fully answered the said bill and admitted, traversed, or denied every fact, material, necessary, compe-
136 tent, or proper for them to answer unto, pray that the injunction heretofore issued in this cause be dissolved, and they hence dismissed with their reasonable costs.

And they have caused this answer to be signed by Richard Wallach, esq., mayor of said city of Washington, and countersigned by Samuel E. Douglass, register of said city, and the seal of the said corporation of said city to be annexed in token of the truth.

RICHARD WALLACH, *Mayor.*
SAMUEL E. DOUGLASS, *Register.*

The defendants file no exhibits.

The Circuit Court for the district of Columbia.

Replication.

THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN Railroad Company, and Alexander Hay, complainants,
vs.
THE MAYOR, BOARD OF ALDERMEN, AND Board of Common Council, and Joseph H. Bradley and A. Thomas Bradley, defendants. } No. 56. In equity.

These repliants saving to themselves all and all manner of advantage of exceptions to the manifold insufficiencies of the said several

answers, for and by way of replication, say that their said bill of complaint, and all the matter and things therein contained are true, certain, and sufficient in law to be answered unto by the said defendants, and that the answers of the said defendants are untrue, uncertain, and insufficient in law to be replied unto by these repliants; without that, that there is any other matter or thing in the said defendants' several answers contained material or effectual for these repliants to reply unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, are true; all which matters and things these repliants are ready to aver and maintain and prove as this court shall award, and pray as in and by their said original bill they have prayed.

STEWART & STEVENS,
Solicitors for Complainants.

Filed December 18, 1863.

137 *Notice that injunction be made perpetual.—Filed November* 4, 1863.

The Supreme Court of the United States for the District of Columbia.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Company, and Alexander Hay, complainants,
vs.
THE MAYOR, BOARD OP ALDERMEN AND COMMON Council of Washington, and Joseph H. Bradley and Thomas A. Bradley, defendants.
} In chancery.

To Messrs. Bradley & Bradley, solicitors for defendants:

You will take notice that on the first Tuesday of November next, at 10 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, we shall move this honorable court, at the special term therof, that the injunction heretofore granted in this cause be made perpetual, and for such other and further order and decree as to this court may seem meet and proper; which motion will be founded on the bill and papers on file in this cause.

Yours, &c.,

STEWART & STEVENS,
Solicitors for Complainants.

Dated Washington, 22d October, 1863.

Endorsed: I admit due service of a copy of the within notice on me, this 23d day of October, 1863.

JOS. H. BRADLEY,
Defendants' Attorney.

138 *Amended bill.—Filed April* 30, 1864.

To the Hon. judges of the Supreme Court of the United States for the District of Columbia:

The Washington, Alexandria and Georgetown Railroad Company, a corporation created and existing in the State of Virginia by virtue of the act of the legislature, and in the District of Columbia by authority of the Congress of the United States, by Alexander Hay, their president, and Alexander Hay a citizen and resident of the city of Philadelphia, State of Pennsylvania, and others who may join in this suit, bring this, their amended bill, against the mayor, board of aldermen, and the board of common council of the city of Washington, and Joseph H. Bradley and A. Thomas Bradley, trustees, and George W. Riggs and A. T. Keickover, partners, doing business under the name and firm of Riggs & Co., and James C. McGuire and P. D. Lengham, citizens of the District of Columbia, and James P. Kilbreth, of the city and State of New York.

And thereupon the complainants, by way of amendment, as ordered by this honorable court, allege and say:

1st. That they are a body corporate, duly created, organized and existing by virtue of the various laws and franchises, as in their said original bill they have alleged and set forth, to which they beg leave to refer as part of this their amended bill.

2d. That on the 8th day of February, 1855, James S. French, assuming to act as president of the said Alexandria and Washington Railroad Company, and Walter Lenox, assuming to act as the treasurer of said company, did enter into a contract with the corporation of Washington, the object and purport of which was, that the said railroad company should issue certain certificates of debt to the amount of $60,000, and the corporation of Washington would guaranty the same, and would also take charge of the issuing of said certificates, with its guarantees written thereon, and would see that the same or the proceeds thereof, should be applied exclusively to the making of said road, which said contract or agreement between the said corporation of Washington and the said railroad company was worded, stipulated and agreed as set forth in an ordinance which passed
139 the boards of aldermen and common council of the said corporation of Washington, on the said 8th day of February, 1855, as follows, to wit:

AN ACT in relation to the Washington and Alexandria railroad.

"Be it enacted by the board of aldermen and board of common council of the city of Washington, That for the purpose of aiding the Washington and Alexandria Railroad Company in the construction and equipment of a railroad from Alexandria, in the State of Virginia, by the shortest practicable route to some convenient point in the city of Washington for the connecting with the depot of the Baltimore and Ohio railroad, the corporation of the city of Washington agrees to

guaranty the certificates of said company to the amount of sixty thousand dollars, bearing interest at the rate of six per cent. per annum, payable half yearly, and issuable in sums of not less than five hundred dollars, the said certificates payable in ten annual instalments of six thousand dollars each, commencing on the first day of January eighteen hundred and fifty-eight, which said guaranty to the amount aforesaid shall be discharged and satisfied out of the ordinary revenues of this corporation within ten days from the maturing of said certificates respectively, and upon the surrender thereof to this corporation, and which said guarantee shall be evidenced by the certificates of the mayor, countersigned by the register, to be endorsed as such certificates to the amount aforesaid: Provided, always, that the said company shall first execute an assignment to this corporation of all its rights, immunities and property, as a security for the punctual payment of the interest and principal of said certificates, and further, that the said company shall give such other security for the payment as shall be satisfactory to the committee hereinafter appointed, which said assignment and security shall inure to the benefit of the holders of said certificates: Provided further, That the assent of this corporation shall be first obtained to any other connection with said road than hereinafter provided for.

"Sec. 2. And be it further enacted, That the mayor and one member from each board, to be selected by the presiding officer thereof, be appointed a committee, under whose direction the said certificates shall be issued, and the same or the proceeds thereof be applied exclusively to making of said road: Provided further, That said committee shall be satisfied that the certificates above guarantied will insure the completion and equipment of said road.

140 "Whereupon Mr. John A. Houston, of the board of aldermen, and Mr. John P. Clements, of the board of common council, were appointed a committee in pursuance of the above second section"

3d. That pursuant to the further agreement, stipulation and ordinance, the further management and control of the issuing of said certificates was exclusively managed by the corporation of Washington, through said joint committee, constituted and appointed as aforesaid; that said committee held divers and successive meetings, and among others, they met on the 11th day of April, 1855, at the mayor's office in the city of Washington, for the purpose of a free interchange of ideas and opinions in reference to the affairs of said company, and also the proper execution of the said law above alluded to in reference to the guaranty of said certificates, when, after deliberation, the committee adjourned to meet again on the next day, the 12th day of April, 1855.

4th. That on the 12th of April, 1855, the said committee met pursuant to adjournment, there being present the mayor, John H. Houston, of the board of aldermen, and John P. Clements, of the board of common council; whereupon, among other things it was, "on motion ordered that the mayor be requested to require of said company good and sufficient security for the payment of the interest

which may accrue on said guarantied bonds, at least ten days before the period of payment may be fixed for the payment of the semi-annual payments thereof," and on motion it was ordered: that the first day of July and the first day of January, in each and every year, be fixed as the period for the payment of the interest which may be due on said guarantied bonds, "and on motion it was further ordered, that the said guarantied bonds, or the proceeds thereof, be deposited to the joint credit of the mayor of Washington and the treasurer of the said Alexandria and Washington Railroad Company," and "on motion it was further ordered that no portion of said guarantied bonds, or the proceeds thereof, shall be applied or paid except by the written order of a majority of this committee."

5th. That on the 16th day of April, 1855, the said committee, on the part of the corporation, again met, when the mayor suggested that, before issuing the endorsed certificates for the amount, additional guarantee or security or evidence should be required showing that the $60,000 would be sufficient to insure the completion and equipment of the road according to the proviso of the bill; and it was then ordered that the deed of trust be so amended as to give the trus-
141 tees the power of foreclosing the same, (if the committee should deem proper,) if the road should not be put in running order by the first of January, 1856, that, with the evidence of ability to complete the work heretofore submitted, being deemed a sufficient compliance with the law, the mayor stated that he adhered to the conclusion which he had just stated to the committee, and that in his opinion the committee should have the evidence of the ability of the company to complete and equip the route by prima facie evidence of credit or cash to a sufficient amount; and it was then ordered that the sum of $25,000 of the certificates of the company be endorsed as provided by law, instead of $18,000, ordered on the 12th instant, Messrs. Houston and Clements voting in the affirmative.

6th. That on the 18th day of April, 1855, the said committee so representing the corporation of Washington, agreed upon and adopted the form of certificates which should be issued by the said railroad company, to be signed by James S. French and Walter Lenox, which were as follows:

$——— DISTRICT OF COLUMBIA. No. ———.

The Alexandria and Washington Railroad Company acknowledge themselves to be indebted to ——— ———, or the holder hereof, in the sum of ——— dollars, current money of the United States, payable at the banking house of Riggs & Co., in the city of Washington on the first day of January, in the year eighteen hundred and ———, with interest thereon at the rate of six per cent. per annum, semi-annually, on the first day of July and the first day of January ensuing the date hereof until the said principal sum shall be paid.

This certificate, and all rights and benefits arising therefrom, transferable by general or special endorsement, or by delivery.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by the president and treasurer, this eighteenth day of April, eighteen hundred and fifty-five.

JAS. S. FRENCH, *President.*
WALTER LENOX, *Treasurer.*

7th. That upon the same 18th day of April, 1855, the said corporation, through its said committee, caused the endorsement
142 or guarantee of the said corporation to be subscribed by its mayor and register as follows, to wit:

MAYOR'S OFFICE, CITY OF WASHINGTON,
April 18, 1855.

Be it known that it is hereby certified in pursuance of the act of this corporation, passed the 8th day of February, 1855, that the foregoing certificate, No. ——, for ——— dollars, issued by the Alexandria and Washington Railroad Company, is guarantied by this corporation, and that the same will be discharged and satisfied by this corporation out of the ordinary revenues thereof within ten days from the maturity of said certificate, and after the surrender thereof to this corporation, and that the payment of the interest of said certificate semi-annually, according to the tenor thereof, is also guarantied by this corporation.

JNO. T. TOWERS, *Mayor.*
WM. McCORMICK, *Register.*

8th. That to the same tenor and purport of the foregoing, with blanks filled up with the various sums agreed on by the corporation, not less than five hundred dollars in any one of them, the said certificates to the amount of $60,000 were all manufactured and prepared for circulation, and the name of the mayor and register of the corporation of Washington was endorsed thereon in manner as above stated, with the intent of thereby binding the credits and revenues of the corporation of Washington for the payment of the same; all of which said certificates were then in the hands of, and under the control of, the said corporation, to be issued and circulated through and by said committee at their option.

9th. That on the same day, or the day following, to wit: the 19th day of April, 1855, the terms of the contract as specified under the first proviso, in the said ordinance aforesaid, to wit: "Provided always that the said company shall first execute an assignment to this corporation of all its rights, immunities and property as a security for the punctual payment of the interest and principal of said certificates," was accordingly carried into effect by James S. French, who, assuming to act in the name of the said railroad company, did sign and and deliver a paper prepared by the said committee, called
a deed of trust, purporting to convey to said corporation, or
143 to Joseph H. Bradley and A. Thomas Bradley as trustees, to hold in its name the whole of the said Alexandria and Wash-

ington railroad, whereby the same was intended to be placed under the control and possession of the said corporation of Washington, which said deed is made part hereof, marked exhibit No. 1.

10th. That the second section of the charter of the said railroad company, as set forth in the original bill heretofore filed in this honorable court by these complainants, conferred upon said company all the power it could rightfully exercise, which, after authorizing its capital stock to the amount of $300,000, and conferring its corporate name, to wit, the "Alexandria and Washington Railroad Company," declared as follows: "and shall be subject to all the provisions of the code of Virginia applicable thereto;" and among the provisions so made part of the charter was the following clause, to wit, "power to borrow money." No company, which by its charter has no express power so to do, shall borrow money until there shall be paid up and expended or appropriated the whole amount of capital stock so subscribed, with the exception only of losses by delinquent or insolvent stockholders. But the president and directors may borrow an amount not exceeding that part of the capital stock which is unsubscribed, and may issue certificates for the money so borrowed, and may make such certificates convertible within a reasonable time into the stock of the company at the pleasure of the holder.

11th. That of the capital stock there was $200,000 subscribed, and of this only a nominal payment of two per cent., or two dollars per share—only making a pretended payment of $4,000 on a subscription of $200,000 as aforesaid, and the certificates issued by the said James S. French and the corporation of Washington, through its said committee, were not to supply the place of unsubscribed stock, and did not so specify on its face or make any reference thereto; nor were the said certificates issued by the president and directors of said company, there being at that time no board of directors elected by the stockholders, or president elected by the directors; and was in fact no body corporate organized or existing, or corporate seal adopted, as required by the code of Virginia, made part of the charter of said railroad company, which provides as follows, to wit: "That there shall be for every company a president and directors who shall be a board to have all things done that are proper to be done by the company, except so far as may be otherwise provided by any law of the State, or any by-law or regulation of the stockholders.

The stockholders at a general meeting prescribe the number
144 of directors; but, unless a different number is prescribed, there shall be five directors besides the president;" which act of election of president or directors had not been performed by said company on or before the eighteenth and nineteenth days of April, 1855, and hence there was no one authorized by law to issue said certificates and execute said deed of trust at the time the same was done, and that neither the said certificates nor deed to the corporation of Washington ever was authorized or approved by the board of directors, or received the sanction of the same in any way.

12th. That the third section of the charter of the said Alexandria and Washington Railroad Company contained the following restric-

tion, to wit: "That the said company shall not permit said road to pass into the exclusive possession of any corporation without the limits of the Commonwealth of Virginia;" that the corporation of Washington is a corporation without the limits of the Commonwealth of Virginia, and the deed executed by James S. French, in the name of said company conveying said road to said corporation of Washington, was a positive violation of the charter, and is null and void.

13th. That the only consideration rendered or performed by the corporation of Washington for the executing of said deed of trust of the nineteenth of April, 1855, was its agreement to guaranty said certificates, as stated and stipulated in said ordinance of the eighth day of February, 1855, aforesaid, which agreement and undertaking was null and void, as there was no delegated authority or power to pledge the city's credit or funds as a security for the payment of the certificates or other obligations of debt of any corporation, foreign or domestic, and could not lawfully levy or collect assessments or taxes upon the people or property of the city of Washington for such purpose, and was in positive violation of the tenth section of the city's charter, which declares "That the corporation shall not have power to increase the present funded debt of the corporation either by borrowing money or otherwise, unless it shall be agreed to do so by two-thirds of the legal voters of the said city at an annual election;" which said provision was violated by the said illegal agreement to guaranty and pay said certificates.

14th. That at the time these said certificates and deed of trust were executed through the said mayor and joint committee of the corporation of Washington, and James S. French and Walter Lenox, pretending to act for the Alexandria and Washington Railroad Company, there were no rights or obligations conferred upon or incurred by either the corporation of Washington or the said railroad company, by which either contracting party was then or subsequently bound; and that any and all persons, natural or corporate, who subsequently took, purchased, acquired, or held the said deed or certificates, acquired in law or equity no rights whatever, as the same and each of them were null and void in their creation.

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15th. There was no certificate or holder of any certificate named or provided for in terms, name, or by date or amount in the said deed of trust which only speaks of certain certificates in sums of not less than $500 each, and in all not to exceed the amount of $60,000, but does not say by what authority, for what purpose, or how created, "which shall be issued from time to time, as the wants of said company may require, and (who) with the aid aforesaid, have undertaken to complete and equip said road by the first day of December next;" but said deed does not in terms or by reference purport to secure the payment of the $60,000 of certificates then issued and created the day previous, to wit, the 18th day of April, 1855.

16th. That the said certificates do not refer to said deed of trust, or any other security given or to be given by the Alexandria and Washington Railroad Company; nor do they purport to derive any

part of their validity or security from that source upon their face, but were wholly created by the corporation of Washington, through its joint committee as aforesaid, and James S. French, calling himself president, and Walter Lenox, calling himself treasurer of said Washington and Alexandria Railroad Company, at a time when there had been no legal organization of said company for the electing and creating of such offices, and hence all their acts and doings as such officers in the name of said company was null and void, of which fact the corporation of Washington and all others handling, purchasing, or receiving said certificates were bound to take notice.

17th. That the said second section of the ordinance aforesaid passed by the corporation of Washington, which enacts "that the mayor and one member from each board, to be selected by the presiding officers thereof, be appointed a committee, under whose direction the said certificates shall be issued, and the same, or the proceeds thereof, be applied exclusively to the making of the road," was wholly and absolutely neglected, and that of the $25,000 of the said certificates issued on the 18th day of April, 1855, the full sum of $24,000, or thereabouts, was applied to the purchase of the stock of the Washington and Alexandria Turnpike Company, as the private property of James S. French and Walter Lenox, and was by them sold and vended in the market as such; that a further sum of $5,000 was paid to James C. McGuire for a previous debt contracted by James S. French in his own name; that a further sum of
146 $8,000 was paid over to Walter Lenox for his services in procuring the endorsement by the corporation of the whole $60,000, and was by him sold or delivered as his private property to the Ohio Life and Trust Company in New York, by whom they were sold or transferred to one Seaton and Wainwright, and by them traded or assigned to one James Kilbreth at a price of less than fifty cents on the dollar, thus making full $37,000 of the $60,000 certificates, which never went into the road according to the terms of the said ordinance and special undertaking of the said corporation of Washington, as aforesaid.

18th. That of the whole amount of the $60,000 of certificates issued as aforesaid, $47,000 were not sold, but were by the said corporation of Washington, through its said joint committee, hypothecated with Riggs & Co., in the name of the corporation, and money was borrowed thereon and paid over on the checks of the mayor and Walter Lenox, but which was not applied to the said railroad according to the contract with the corporation, as aforesaid, which said pledging or hypothecation was a violation of the terms and intent of said ordinance and deed of conveyance to the corporation, and was unauthorized and void in law, as it put in jeopardy the said certificates contrary to the rights of said company, even had its action otherwise been legal and valid; that of these certificates so pledged by the corporation the said Riggs & Co. still hold a large number, the exact amount of which is unknown to these complainants.

19th. That the condition and agreement provided in the said second section of said ordinance and contract, to wit: "that said

committee shall be satisfied that the certificates above guarantied will insure the completion and equipment of said road," was wholly disregarded and neglected by said corporation committee, who, had they taken the least pains, could have learned, and who were in fact tendered the information by divers persons, that said security could not satisfy the then existing debts of the road for money, material and labor, advanced and applied by these complainants or their assignors, whose interests were to be, and were, directly affected by the creation of such a debt, and the incumbering of the franchises and property of said railroad company, by the said certificates and deed of trust; but that said committee, refusing to be advised or to secure the proper information themselves, heedlessly put in circulation said certificates without regard to the most accessable information, and indeed had ordered $25,000 of the amount into circulation on the 16th day of April, 1855, being three days before the deed of trust was executed.

147 20th. That after said sum of $60,000 was found insufficient to complete the road, the said company borrowed a further sum of $14,500, from Fowle, Snowden & Co., for which they executed a deed of trust, as in these complainants' original bill is stated; and this also not being sufficient, the said company on the 27th day of February, 1866, procured a special law to be enacted by the legislature of Virginia, which authorized them to issue $100,000 of coupon bonds, of which amount they did, on the 16th day of July, 1856, issue $30,000, sold to Benjamin Thornton, of England, for the securing of which the said company executes a third deed of trust to Walter Lenox on that day, as stated in the said original bill heretofore filed by these complainants.

21st. That by the terms of said deed of trust executed on the 19th April, 1854, the said corporation renewed the right to sell said road, if the said company failed "to complete and equip the said road by the first of December next ensuing," or should fail to pay the principal and interest of said certificates first to accrue due on the first day of January, 1858; that the road was not completed by the first day of December, 1855, and the said company did not pay the principal and interest of said certificates that accrued due on the first day of January, 1858, but still the said corporation did not sell nor offer to sell said road, though it was admonished to do so, and urged to close up its relations with said road, by those who held larger demands against the road, which were greatly embarrassed by the existence of the said deed so executed to the corporation of Washington.

22nd. That not only did the corporation of Washington wholly fail and refuse to take any steps to close up their said lien on said road, if any they had, but no one, nor did any of the said certificate holders make demand upon the corporation or take any steps to have such done. Nor did any certificate holder ever make any claim for either the principal or interest of any certificates held by such person or persons against the said railroad company, or ever offer to treat with or make any claim against the said company in any way. That all

such persons claimed only of the corporation of Washington, whose committee in fact created said certificates and put the same in circulation. And there has been no demand or claim made to this day upon the company by such certificate holders.

23d. That at the time said deed of trust was executed to the said corporation, it was known that said railroad company was largely in debt as aforesaid, but that the corporation nevertheless, persisted in said transaction, and would not even accept $48,000 which was tendered in 1858, while the road was in better condition, in
148 liquidation of its illegal claims, which sum was offered by these complainants as we in said original bill stated; that after the road was involved in debt, covered with judgments and liens, and was robbed of all its rolling stock, and left nothing but its bare track, these complainants still offered to take over one half of the whole debt upon themselves, which offer received the approval of one board of the city council and was defeated in the other. But not until the road was sold under the deed of trust to Lenox, on the 10th of April, 1862, of which sale the corporation had notice, and one of its trustees was present, and which sale was well known to each and all the certificate holders, but no objection was made by any or either, nor was any offer ever made to relieve the road from its ruined condition, or other steps taken in the matter until after these complainants, having extended their charter across the river, (in which effort they were opposed by a special committee sent before Congress by the corporation to defeat the bill,) and had expended and applied over $300,000 in rebuilding and equipping the road and bridging the Potomac, the corporation then, and not until then, offered to act under its deed of trust to the end of selling the property thus developed and paid for by these complainants.

24th. That at the time said sale was made on the 10th day of April, 1862, the said road was so ruined and destroyed, and robbed of all its property, that it was comparatively valueless, and was not worth for any practical purpose the sum of ten thousand dollars, as it would require a sum nearly equal to its then capital stock to build it up, equip it, and put it in anything like working order; and even this depended upon the chances of getting the charter extended across the river, and through the city of Washington, to the Baltimore and Ohio depot, which was done by these complainants, though the corporation did send a special committee before Congress to defeat the extension of said charter, which was resorted to as a means of extorting an illegal demand from these complainants.

25th. That since the commencement of this suit, the legislature of the State of Virginia has passed an act increasing the capital stock of this company from $300,000 to the sum of $500,000; and also conferred certain additional rights upon these complainants, as will more fully appear by reference to said law made part hereof marked exhibit No. 2.

26th. In consideration of the premises and the matters hereinafter stated and alleged, that the said certificates issued in the name of the Alexandria and Washington Railroad Company, by the joint opera-

tion and agreement entered into between James T. French and Walter Lenox and the corporation of Washington, on the
149 18th day of April, 1855, were not valid obligations against the said railroad company, and illegal and void in law or equity against these complainants, and in addition to the premises, and as special grounds for the relief hereinafter prayed, these complainants do allege and charge:

First. That on or before the 18th day of April, 1855, the said Alexandria and Washington Railroad Company, as chartered by the legislature of the State of Virginia, as in the original bill of these complainants heretofore filed as aforesaid, had not been legally organized by the election of a board of directors—a president and other proper officers, who could of lawful right adopt or use a corporate seal—or make contracts which could bind said company in law or equity, before such legal organization was perfected; and that no certificates of debt could be lawfully issued by James S. French or Walter Lenox, acting as pretended president or treasurer of said company, when no election or legal creation of such offices and officers had been had, as prescribed by the code of Virginia, made part of the charter of said company; nor could any such unauthorized act bind or effect the subsequent valid organization of said company, or bind these complainants.

Second. That had there been such legal organization of said company by the election of proper officers on or before the 18th day of April, 1855, the said papers called certificates were issued in violation of the 27th section of the 61st chapter of the code of Virginia, made part of the charter of said company, and were issued before the capital stock as subscribed was in good faith paid up or expended as required by the said law, and the said certificates were not issued by the president and directors of said company as positively required by the code of Virginia, made part of the charter of said company.

Third. That the said certificates were not issued under the corporate seal of said company, which in fact never having been legally organized by the election of a board of directors and other proper officers, there was no one authorized to adopt or use a common seal; and said certificates never were the legal obligations of said company, or of any other effect except as the private obligations of James S. French and the corporation of Washington.

Fifth. That the third section of the charter of said railroad company expressly provided that said company should not permit said road to pass into the exclusive possession of any corporation without the limits of the commonwealth of Virginia, and that the deed executed on the 19th of April, 1855, by James S. French
150 to the corporation of Washington, did attempt to pass said road into the exclusive possession of said corporation, and which is without the limits of the Commonwealth of Virginia, and was void in law because a violation of the said charter.

Sixth. That the said deed so executed to the corporation of Washington never was authorized or approved by the board of directors of said company, even had the same been duly organized, and was

never the act and deed of said railroad company, or operative as a security for said certificates, or binding upon the franchise and property of said company.

Seventh. That the said deed does not refer to or include in any of its provisions the said certificates issued on the 18th April, 1855, either by date, number, or amount, nor by description or specification. Nor do the said certificates by date, number, or any other reference or description, refer to the said deed of trust so executed to the corporation of Washington, nor do said certificates purport to be secured by said deed of trust, nor did they derive any part of their negotiable value from or by virtue of said deed.

Eighth. That the said certificates were each and all of them created and put into circulation by the corporation of Washington, acting through its said committee, who had exclusive control of the issuing of the same, and undertook to apply the same or the proceeds thereof exclusively to the making of said road; and also to see that the amount of the certificates so issued would be sufficient to complete and equip the same. In all of which undertakings the said corporation wholly failed to perform its duties by issuing said certificates when they were obviously insufficient to complete the road, and permitted their proceeds to be applied to other purposes than its construction as required by the agreement and ordinance aforesaid.

Ninth. That the certificates held by Riggs & Co. were not received from the railroad company, but were pledged by the corporation of Washington, and the money was borrowed thereon, and whose mayor checked for the same, together with Walter Lenox; that said Riggs & Co. dealt wholly with the corporation of Washington, and had no transaction whatever with the railroad company, to whom no credit whatever was given, and said certificates are now held subject to the control of the said corporation of Washington.

Tenth. That the $8,000 of certificates, or any other amount of the same held by the said James P. Kilbreth, were by the said corporation of Washington delivered to Walter Lenox, who re-
151 ceived the same as a reward for his services in procuring the passage of the ordinance aforesaid, guaranteeing the said certicates, which said $8,000 of certificates were by the said Lenox passed to the Ohio Life and Trust Company, in the city of New York, for less than fifty cents on the dollar, and were by the said Ohio Life and Trust Company passed to Seaton and Wainwright, and by the latter to the defendant, James P. Kilbreth, for a still less valuation, who now holds the same. That said certificates were not negotiated upon the credit of the said railroad company, nor for its use, which was a violation and perversion of the objects of their creation as aforesaid, and hence were null and void as a charge against the said railroad company.

Eleventh. That James S. French borrowed of James C. McGuire the sum of $5,000 on his individual credit, and subsequently in discharge of this debt paid to said McGuire $5,000 in amount of said certificates, which was done with the full knowledge of said corporation of Washington.

27th. These complainants have no knowledge of the means by which the said Langham became the holder of the said certificates, if any are now in fact so held by him.

28th. These complainants charge that the whole contract and agreement entered into between James S. French and the corporation of Washington on the 18th and 19th days of April, 1855, and all the antecedent negotiations conducive thereto, as hereinbefore stated, were null and void; that the said railroad company was not duly organized as aforesaid; that James S. French and Walter Lenox had no legal power to issue said certificates in the name of said railroad company; that James S. French had no right to execute said deed of trust; that the corporation of Washington had no right or power to make, or conspire to make, and put in circulation said certificates, or to endorse the same, or to accept, or cause to be accepted and executed, said deed of trust in its behalf, and that there was no consideration for the execution of said deed; and that in point of fact there were no certificates issued as stipulated by said deed, all having been then created and held by the corporation of Washington, and are not the certificates contemplated in the terms of the deed to be issued by the said railroad company. Wherefore, and for all and singular these reasons, and others in the premises mentioned, the said certificates, and none of them, nor the said deed to the corporation of Washington, never were, and are not in law or equity, a valid or legal charge on the said railroad company, or upon these complainants as their legitimate successors.

152 28th. Wherefore, and to the end of the discovery of such information resting wholly on the knowledge of these several defendants, and of which these complainants are not possessed, each and several the said defendants, to wit, the said Riggs & Co., the said Kilbreth, the said McGuire, and the said Langham, are required to answer and disclose on their respective corporeal oaths—

First. The amount of certificates they severally or jointly hold.

Second. From whom he or they received the same; upon what terms or consideration, and when had and to whom paid.

Third. Whether any of said certificates were received from the late Alexandria and Washington Railroad Company; or did you, or either of you, negotiate with said company as such, or advance to it any money or credit whatever? If so, please state when, where, and all about it.

Fourth. Did you, or either of you, ever make any demand upon the said railroad company for the payment of either the principal or interest of said certificates, or make any protest against the said company for the non-payment thereof? If so, state how, when, where, and all about it.

Fifth. The said Riggs & Co. will please state, specially, whether they did or did not negotiate exclusively with the corporation of Washington, and did lend their money wholly upon the credit and faith of the corporation of Washington; and also state whether you have or have not any knowledge or information of the application of any portion of the proceeds of said certificates in the purchase of any turnpike stock. And if so, when and to what amount?

29th. And these complainants, now as heretofore, tendering to do, perform, and abide all that is legal, equitable and just to and in behalf of the said several defendants now made parties hereto; and having repeatedly tendered to pay, and having further so tendered to pay, since the late decision of this honorable court, a much larger amount of money to and for the use of the said several defendants and the said corporation of Washington, than ever was applied in good faith to the benefit of said railroad company, but which, from special causes and influences, has been declined and refused, do now claim and maintain that said certificates, and no part of the same, are a legal and valid charge against the complainants; and for the reasons in the premises mentioned, do pray that the United States writ of subpœna may issue from this honorable court to all and singular the said defendants, requiring them, and each of them, to
153 answer upon their respective corporeal oaths, all and singular the matters, facts and things hereinbefore alleged and interrogated into; and that they, and each of them, bring and exhibit to this honorable court all and singular the certificates they so hold; and that upon final hearing that the said certificates, each and all, and also the said certificates held by the said corporation of Washington, if any, may be adjudged and declared null and void in law as against these complainants, and that these complainants may have all general and special relief has unto this honorable court shall appear just and proper.

STEWART & STEVENS,
REVERDY JOHNSON,
For Complainants.

In the Supreme Court of the District of Columbia, April 30, 1864.

Summons.

WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Company, complainants, *against* MAYOR, ALDERMEN AND BOARD OF COMMON Council of Washington city and others, defendants. } No. 56. Equity.

The President of the United States to the Mayor, Aldermen, Common Council of Washington city, Joseph H. and A. Thomas Bradley, trustees, &c., George W. Riggs, A. T. Keickover, James C. McGuire, P. D. Langham, of Washington city, and James P. Kilbreth, of New York city, defendants:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the amended bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Carter, Chief Justice.

R. J. MEIGS, *Clerk.*

Memorandum.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to

which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return on summons.

1864, MAY 5.

Summons returned non sunt. Lengham & Kilbreth. Sum'd the others, together with copy of amended bill.

W. H. LAMON, *Marshal.*

154 *Supplemental Exhibit No. 1.*

The city's indebtedness on account of the Alexandria and Washington railroad.

In the board of common council, on Monday, August 31, 1863, Mr. Noyes, from the special committee on the bill to provide for the payment of the sixth instalment of the principal, and the half yearly interest due on the guarantied bonds of the Washington and Alexandria railroad, submitted the subjoined report, which was ordered to be published with the proceedings of the board, and specially assigned for the consideration of the board at its next meeting.

The guarantied bonds of the Washington and Alexandria railroad.

To the Board of Common Council:

The committee to whom was referred the following act, viz.:

AN ACT to provide for the payment of the sixth instalment of the principal and the half yearly interest due on certain guarantied bonds.

"Whereas the interest due on the 1st day of July, 1862, on the 1st day of January, 1863, and 1st day of July, 1863, on the bonds of the Alexandria and Washington Railroad Company, guarantied by this corporation agreeably to the provisions of the act of February 8th, 1855, and six thousand dollars of the principal of said bonds, also due on the said 1st day of January, 1863, have not been paid by said company; therefore,

"Be it enacted, &c., That the mayor be, and he is hereby, directed to pay the said principal and interest due and unpaid on said bonds guarantied as aforesaid, and to meet said payments the sum of eight thousand seven hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated out of the general funds," respectfully submit the following report:

As there seems to be some misconception of the nature of the corporation's obligation, and the manner in which it was incurred, your committee think it proper to recite, as briefly as possible, the history of the transaction.

155 The act passed by the city council of Washington agreeing to guaranty the certificates of the Washington and Alexandria Railroad Company to the amount of $60,000 is as follows:

AN ACT in relation to the Washington and Alexandria Railroad.

"Be it enacted by the board of aldermen and the board of common council of the city of Washington, That for the purpose of aiding the Washington and Alexandria Railroad Company in the construction and equipment of a railroad from Alexandria, in the State of Virginia, by the shortest practicable route, to some convenient point in the city of Washington for connecting with the depot of the Baltimore and Ohio railroad, the corporation of the city of Washington agrees to guaranty the certificates of said company to the amount of sixty thousand dollars, bearing interest at the rate of six per cent. per annum, payable half yearly, and issuable in sums of not less than five hundred dollars, the said certificates payable in ten annual instalments of six thousand dollars each, commencing on the first day of January, eighteen hundred and fifty-eight; which said guarantee, to the amount aforesaid, shall be discharged and satisfied out of the ordinary revenues of this corporation within ten days from the maturing of said certificates respectively, and upon the surrender thereof to this corporation; and which said guarantee shall be evidenced by the certificate of the mayor, countersigned by the register, to be endorsed on such certificates to the amount aforesaid, to the effect that the same are guarantied as aforesaid: Provided always, That the said company shall first execute an assignment to this corporation of all its rights, immunities and property as a security for the punctual payment of the interest and principal of said certificates; and further that the said company shall give such other security for the payment of said interest as shall be satisfactory to the committee hereinafter appointed; which said assignment and security shall inure to the benefit of the holders of said certificates: Provided further, that the assent of this corporation shall be first obtained to any other connection with said road than herein provided for.

"Sec. 2. And be it further enacted, That the mayor and one member from each board, to be selected by the presiding officer thereof, be appointed a committee under whose direction the said certificates shall be issued, and the same, or the proceeds thereof, be applied exclusively to the making of the said road: Pro-
156 vided further, that said committee shall be satisfied that the certificates above guarantied will insure the completion and equipment of said road.

"A. McD. DAVIS,
President of the Board of Common Council.
"SILAS H. HILL,
President of the Board of Aldermen.

"Approved February 8, 1855.
"JOHN T. TOWERS, *Mayor.*

"Mr. John H. Houston of the board of aldermen, and Mr. John T. Clements of the board of common council, were appointed the joint committee in pursuance of the above second section."

At a meeting of the committee held April 12th, 1855, it was ordered that the mayor and register be requested to guaranty bonds to the amount of $18,000, and that the said bonds, or the proceeds thereof, be deposited to the credit of the mayor of Washington and the treasurer of the railroad company, and that no portion of said guarantied bonds, or the proceeds thereof, should be applied or paid except by the written order of the committee.

At a meeting of the committee on the 16th of April, it was ordered that $25,000 of the certificates of the company be endorsed instead of the $18,000 voted on the 12th instant.

On May 31st the committee ordered $13,000 guarantied bonds to be issued, to be deposited with Riggs & Co., as the former bonds were.

On June 30th, $7,000 of the bonds were ordered to be issued and deposited with Riggs & Co.; July 13th, $2,000 were ordered to be issued; July 25th, $8,000; and on September 27th $5,000 more, making up the balance of the $60,000.

The following is the form of guarantee upon each bond so issued:

"MAYOR'S OFFICE,
City of Washington, July 1, 1865.

"Be it known, and it is hereby certified in pursuance of the act of this corporation passed the 8th day of February, 1855, that the foregoing certificate, No. 60, for five hundred dollars, issued by the Alexandria and Washington Railroad Company, is guarantied by this corporation, and that the same will be discharged and satisfied by this corporation out of the ordinary revenues thereof within ten days from the maturity of said certificate and after the sur-
157 render thereof to this corporation, and that the payment of the interest of said certificate semi-annually, according to the tenor thereof, is also herein guarantied by this corporation.

"JOHN T. TOWERS, *Mayor.*
"WM. J. McCORMICK, *Register.*

Of the $60,000 bonds guarantied by the corporation, $47,000 were deposited with Riggs & Co. for sale. Some were sold, and Riggs & Co. advanced on the joint check of the mayor of Washington and the treasurer of the railroad company some $2,000 less than the face of the bonds.

Upon the failure of the railroad company to redeem their obligations, appropriations of money were made by the corporation, from time to time, to pay the interest and that part of the principal as it became due, which has been disbursed by Riggs & Co., and such of the bonds as became due at and prior to January, 1862, have been paid, leaving three instalments of interest and one of $6,000 principal now due.

There are now outstanding $31,000 of the bonds, but as Riggs & Co. never bought the bonds, but only advanced on them, their account amounts to some $15,000 only, though holding $17,000 bonds.

The following communications, received in answer to interrogato-

ries by your committee, afford an exhibit of the present disposition of the bonds and the manner of their negotiation:

"OFFICE OF RIGGS & CO.,
"*Washington, D. C., August* 17, 1863.

"Crosby S. Noyes, Esq., chairman of Select Committee on the Washington and Alexandria railroad:

"DEAR SIR: In answer to your note, I beg leave to state to you, as briefly as I can, the particulars of the negotiation of such of the bonds of the Washington and Alexandria Railroad Company as came into the hands of Riggs & Co.

"In April, 1855, I was informed that bonds of this road, guarantied by the corporation of Washington, would be for sale, and I was asked if my house would undertake the negotiation and make advances on the bonds before they were sold. Before agreeing to do anything, I called on one of the members of the joint committee, (composed, I think, of one member from each board,) who, with the mayor of Washington, had, I was informed, authority to issue the guarantied bonds.

"I asked if the guarantee was correct, legal and binding on
158 the corporation. I was answered that in every respect it was as safe and sound an obligation as any bond or stock of the corporation then outstanding.

"With this assurance, placing trust in the integrity of the corporate authorities of the city of Washington, I agreed, in behalf of Riggs & Co., to undertake the negotiation of some of the bonds, making advances thereon to the mayor of Washington. The money advanced, with interest thereon at the rate of six per cent. per annum, was to be repaid out of the proceeds of the bonds when sold.

"The first advance by us was made April 19, 1855, by payment of a check on us dated 18th April, 1855, signed by J. T. Towers, mayor of Washington, and W. Lenox, president (treasurer) of the road. Subsequently advances were made, for all of which we hold checks, also signed by the then mayor of Washington.

"When the first advance was made, bonds for $25,000 were placed in our hands for sale. Subsequently bonds for $22,000 have been placed with us, on which we also advanced. We then declined advancing more, and never received or had anything to do with any more of the bonds.

"The amount of bonds placed in our hands was		$47, 000
Of these we sold	$9, 000	
And received payment for	21, 000	
		$30, 000
Leaving still in our hands		$17, 000
Of which there are due 1st January, 1853		$6, 000
1st January, 1864		6, 000
1st January, 1865		5, 000

"By reference to the amount as it stands on our books (which I send you) it will be seen that the proceeds of bonds sold, the amount of bonds paid, and the interest collected were credited, and that interest is charged on the sums advanced. The interest we collected on the bonds being more than the interest charged by us, the debt to us has been diminished by the difference. The account shows a balance due us on the 31st of December, 1861, of $14,891 71, against which we hold bonds for $17,000. We have never directly or indirectly had any interest in the stock of the Washington and Alexandria Railroad Company, nor have we at any time had to do with its management or its affairs in any way excepting the above.

"The advances made by us on the bonds were to the mayor of Washington, as is shown by the checks in our possession which
159 you have seen, and were made upon his assurances and that of a member of the joint committee representing the boards of aldermen and common council of Washington, that the faith of the city was pledged for the prompt payment of the bonds.

"I enclose a copy of the endorsement of one of the bonds.

"As far as we are concerned, or had to do with the negotiation of these bonds, I have answered your question. It remains for the corporation of Washington to redeem its faith or to repudiate its obligation to return to us the money we advanced thereon to its executive officer.

"Very respectfully, dear sir, your obedient servant,

"GEORGE W. RIGGS."

J. T. Towers, Mayor of Washington, and W. Lenox, Treasurer, Washington and Alexandria Railroad Company, in account with Riggs & Co.:

DR.

1855.			
April 19.	To check		$21,400 00
20.	do		2,250 00
May 2.	do		150 00
4.	do		450 00
June 1.	do		4,000 00
4.	do		7,250 00
15.	do		2,000 00
27.	do		25 00
30.	interest to 30th June, 1855		343 80
			$37,868 80

1855.			
June 30.	To balance		$36,870 13
30.	cash		6,000 00
July 13.	do		1,500 00
Dec. 28.	interest to 31st December, 1855		1,331 10

1856.		
June 30.	To interest to 30th June, 1856	$1,331 10
Dec. 30.	interest to 31st December, 1856	1,331 10
1857.		
June 30.	interest to 30th June, 1857	1,331 10
Dec. 30.	interest to 31st December, 1857	1,170 11
		$50,864 64

160 1857.		
Dec. 30.	To balance	$37,393 54
1858.		
June 30.	interest to 30th June, 1858	959 05
		$38,352 59

1858.		
June 30.	To balance	$31,212 59
Dec. 31.	interest to 31st December, 1858	917 08
1859.		
June 30.	interest to 30th June, 1859	911 36
Dec. 31.	interest to 31st December, 1859	909 79
		$33,950 82

1859.		
Dec. 31.	To balance	$31,070 82
1860.		
June 30.	interest to 30th June, 1860	910 20
Dec. 31.	interest to 31st December, 1860	789 51
1861.		
June 30.	interest to 30th June, 1861	630 30
Dec. 31.	interest to 31st December, 1861	628 52
31.	advertising in Evening Star	2 37
		$34,031 72
	To balance, cash, 31 December, 1861	$1,489 72

CR.

1855.		
June 23.	By $1,000 Washington & Alexandria Railroad bond	$998 67
30.	balance	36,870 13
		$37,868 80

1856.		
Jan. 2.	By cash Washington & Alexandria Railroad Co.	$1,331 10
Dec. 30.	interest on bonds to 31st December, 1856	2,760 00

1857.		
Aug. 1.	To interest on bonds to 30th June, 1857	$1,380 00
18.	$6,000 bonds, at par	6,000 00
18.	$2,000 bonds, at par	2,000 00
Dec. 31.	balance	37,393 54
		$50,864 64

161 1858.

Feb. 8.	By six months interest on $38,000 from corporation of Washington	$1,140 00
8.	bonds 1 and 9 paid by do.	6,000 00
June 30.	balance	31,212 59
		$39,352 59

1858.		
Aug. 20.	By interest on $32,000 to July 1, 1858	$960 09
1859.		
Jan. 17.	interest on $32,000 to 31st December, 1858	960 00
Aug. 4.	interest on $32,000 to 1st July, 1859	960 00
Dec. 31.	balance	31,070 82
		$33,950 82

1860.		
Feb. 13.	By interest to 1st January, 1860	$960 00
Aug. 21.	interest to 1st July, 1860	960 00
Sept. 25.	bonds paid	4,000 00
1861.		
May 18.	bonds paid 1st January, 1861	5,000 00
Sept. 7.	interest to 1st January	840 00
12.	interest to 1st July, 1861	690 00
1862.		
Feb. 21.	bonds 1st January, 1862	6,000 00
21.	interest 1st January, 1862	690 00
21.	balance	14,891 72
		$34,031 72

Your committee have seen the originals of the checks referred to by Mr. Riggs, and as they settle some points of interest in connection with the history of these transactions, copies are appended, as ollows:

f

WASHINGTON, D. C., *April* 18, 1855.

Riggs & Co. pay to our own order, twenty-one thousand four hundred dollars.

JOHN T. TOWERS,
Mayor of the city of Washington.
WALTER LENOX,
Treas. Alex. and Wash'n R. R. Co.

Marked: Good for twenty-one thousand four hundred dollars. Riggs & Co.

Endorsed: Pay to the order of Wm. G. Cazenove and Francis L. Smith. Jno. T. Towers, Mayor. Walter Lenox, Treas. W. G. Cazenove, Francis L. Smith. Pay Mr. J. D. Javins and W. H. Marbury, cash. J. D. Javins.

162 WASHINGTON, D. C., *April* 18, 1855.

Riggs & Co. pay to our own order, two thousand two hundred and fifty dollars.

JOHN T. TOWERS,
Mayor of the city of Washington.
WALTER LENOX,
Treas. Alex. and Wash'n R. R. Co.

Marked: Good for two thousand two hundred and fifty dollars. Riggs & Co.

Endorsed: Pay to the order of B. Forrest, executor of James Keith. John T. Towers, Mayor. Walter Lenox, treasurer. B. Forrest, ex'r James Keith.

WASHINGTON, D. C., *April* 27, 1855.

Riggs & Co. pay to F. L. Smith, Alexandria, or order, one hundred and fifty dollars.

WALTER LENOX,
Treas. Wash'n and Alex. R. R. Co.
JOHN T. TOWERS, *Mayor.*

Endorsed: Pay the within to Dennis R. Blacklock, esq. Francis L. Smith. April 28, 1855. D. R. Blacklock. Taylor & Maury.

WASHINGTON, D. C., *May* 4, 1855.

Riggs & Co. pay to Walter Lenox, att'y of R. C. W., or bearer, four hundred and fifty dollars.

WALTER LENOX,
Treas Wash'n and Alex. R. R. Co.
JOHN T. TOWERS,
Mayor.

Endorsed: Walter Lenox, att'y.

WASHINGTON, D. C., *May* 31, 1855.

Riggs & Co. pay to James S. French, pr. Anderson, Delaney & Co., Richmond, Va , (engines) two thousand dollars.

JOHN T. TOWERS, *Mayor.*
WALTER LENOX, *Treasurer.*

Endorsed: James S. French, pres't Alex. and Wash'n R. R. Co.

WASHINGTON, D. C., *May* 31, 1855.

Riggs & Co. pay to James S. French, pres't Alex. and Wash'n R. R. Co., for Morris, Tanner & Co., Richmond, Va., (iron,) seven thousand two hundred and fifty dollars.

JOHN T. TOWERS, *Mayor.*
WALTER LENOX, *Treasurer.*

Endorsed: James S. French, pres't Alex. and Wash'n R. R. Co.

163 WASHINGTON, D. C., *June* 1, 1855.

Riggs & Co. pay to James S. French, or bearer, (excavation and materials of Alex. and Wash'n R. R. Co.,) four thousand dollars.

JONH T. TOWERS, *Mayor.*
WALTER LENOX, *Treasurer.*

WASHINGTON, D. C., *June* 20, 1855.

Riggs & Co. pay to James S. French, president A. and W. R. R. Co., or order, six thousand dollars.

JOHN T. TOWERS, *Mayor.*
WALTER LENOX, *Treasurer.*

Endorsed: James S. French, Pres't Alex. and Wash'n R. R. Co.

WASHINGTON, D. C., *July* 13, 1855.

Riggs & Co. pay to James S. French, president Alex. and Washington R. R. Co., fifteen hundred dollars.

JOHN T. TOWERS, *Mayor.*
WALTER LENOX, *Treasurer.*

Endorsed: James S. French, Pres't Alex. and Wash'n R. R. Co.

REGISTER'S OFFICE, *August* 19, 1863.

C. S. Noyes, chairman of committee:

DEAR SIR: In answer to yours of the 31st ultimo, I have the honor to transmit the names, &c., of the holders of the outstanding guarantied bonds of the Washington and Alexandria Railroad Company.

Very respectfully, yours &c.,

SAMUEL E. DOUGLASS, *Register.*

Statement of the guarantied bonds of the Washington and Alexandria Railroad Company, with the names of the holders.

Names.	No.	Amount.	When due.
Riggs & Co	46	$1,000	January 1, 1863.
do	47	1,000	do do
do	48	1,000	do do
do	49	500	do do
do	50	500	do do
do	51	500	do do
do	52	500	do do
do	53	500	do do
164 do	54	500	do do
do	55	1,000	do 1864.
do	56	1,000	do do
do	57	1,000	do do
do	58	500	do do
do	59	500	do do
do	60	500	do do
do	61	500	do do
do	62	500	do do
do	63	500	do do
do	64	1,000	do 1865.
do	65	1,000	do do
do	66	1,000	do do
do	67	500	do do
do	68	500	do do
do	69	500	do do
do	70	500	do do
J. C. McGuire	83	1,000	do 1867.
do	84	1,000	do do
do	85	500	do do
do	86	500	do do
do	87	500	do do
do	88	500	do do
do	89	500	do do
do	90	500	do do
Ohio Trust Fund Co	73	1,000	
do	74	1,000	
do	75	1,000	
do	82	1,000	
do	71	500	
do	72	500	
do	76	500	
do	77	500	
do	78	500	
do	79	500	
do	80	500	
do	81	500	
P. B. Langhan	34	500	January 1, 1861.
do	35	500	do do
Total		$31,000	

Your committee have prosecuted the inquiry with which they were charged as thoroughly as has been in their power; and while they find occasion to express their surprise at the singular delin-
165 quency of the then mayor of Washington and the joint committee by which the failure was made to see that the corporation's claim upon the road was fully secured, and that the guarantied bonds would insure the completion of the road, they cannot see that the bondholders are in any sense responsible for the laches of the corporation's agents.

The disgraceful manner in which the corporation's interests were neglected in these and other transactions in connection with this road is one of the most mortifying chapters in our municipal history.

There is no doubt that much might be said in defense of those who advocated furnishing aid to the road. It was deemed of the first importance that the line of track (including right of way across Pennsylvania avenue) through this city, making the connecting link between the great routes north and south, should be laid without delay to forestall rival interests actively at work to divert it north of this city, via Georgetown,) or south, (via the bay line of steamers from Baltimore to Norfolk,) and it was held even that a positive donation of the $60,000 to secure such an end would be money well laid out for the city.

But the wretched manner in which the corporation's share in the business was managed makes it a matter of regret that whatever aid was afforded the road by the city had not in fact taken the shape of a free gift.

But the debt with which we are now dealing is one in which the railroad company—who do not care a straw whether we pay it or repudiate it—has no interest whatever. The corporation procured the money on its own responsibility and paid it over to the railroad company, and has now to deal with its own creditors, the railroad company being indifferent spectators.

Riggs & Co., who had previously dealt in city stocks, (and always advantageously to the city's credit, it is due to them to say,) acted simply as commission merchants for the corporation, receiving its bonds for sale and advancing money to the corporation upon its checks.

The bondholders who purchased did so in good faith, upon the corporation's guarantee, either as an investment or upon the personal appeals as public spirited citizens to aid by such purchase in the completion of a work deemed of vital importance to the interests of Washington.

As will be seen by the record set forth above, the corporation has bound itself for the payment of these bonds, step by step, by the most solemn forms of legislation, executive action, and payment of a moiety of the debt. It is a debt not pleasant to pay, in view of the unsatisfactory returns from our investment thus far, but it is
166 one honorably and justly due, and its repudiation would, in the opinion of your committee, involve a worse than Mississippi repudiation, since it is not denied that the money was obtained

solely upon the corporation's faith, and the most part of it directly upon the corporation's checks.

The general history of the road has been already duly ventilated, and your committee do not feel it necessary, or within the scope of the inquiry submitted to them, to enter upon it in this report further than to express the regret that the heretofore negotiations for the sale of the corporation's interest in the road should have fallen through, and the corporation thus failed to rid itself of its very undesirable elephant. The road is now advertised to be sold at public sale by the trustees, (Messrs. Bradley & Son,) under instruction of the mayor, in accordance with the action of the late councils. It is to be hoped that through this sale, or the legal proceedings following upon its announcement, the question of the value of the corporation's interest in the road may be brought to a definite issue.

Your committee respectfully report back the accompanying bill, referred to them, and recommend its passage. Should the corporation never realize one cent of return from its unfortunate investment in the Washington and Alexandria Railroad, it is not the less bound in justice and honor to repay the money procured on its own solemn guarantee, and receipted for by its own officers.

CROSBY S. NOYES.
GEORGE R. RUFF.
NOBLE D. LARNER.

Ex. "C."—No. 2.—37th Congress, 2d Session.—H. R. 468.

In the House of Representatives, May 13, 1862.—Read twice, recommitted to the Committee for the District of Columbia, and ordered to be printed. Mr. John B. Steele, from the Committee for the District of Columbia, reported the following bill:

A BILL to extend the charter of the Alexandria and Washington Railroad Company, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the charter of the Alexandria and Washington Railroad Company be, and
167 the same is hereby, extended from the south end of the Potomac bridge, as the same is now constructed, along Maryland avenue to the Capitol grounds, and across Pennsylvania avenue along First street to Indiana avenue, and thence to the Baltimore and Ohio depot; and that all the ordinary rights privileges and liabilities incident to similar bodies, corporate and politic, are hereby created and conferred upon said company: Provided, That the location of said road, as herein extended, shall be subject to such change as the future alteration or extension of the Capitol grounds, or of the streets and avenues, may require.

SEC. 2. And be it further enacted, That the said company are hereby empowered to make such additional structure or passage way along either side or over the Potomac bridge as, in the opinion of the Commissioner of Public Buildings, may render the same safe for public use,

and so as not to hinder the general use of said bridge for ordinary travel, which shall be ascertained by one or more experienced civil engineers, who shall report, by proper surveys and estimates, to the Secretary of the Interior for his approval; the whole cost of which surveys and contruction of said additional bridge for the purposes aforesaid to be paid by the said company. And the said company shall construct such draws as shall correspond with those now in use on the said bridge, and afford equal facilities for navigation on the Potomac.

SEC. 3. And be it further enacted, That the said company shall keep that portion of the avenues or streets occupied by their road in good repair, and provided with suitable crossways, at the proper places, for vehicles and wheeled carriages, and for general use.

SEC. 4. And be it further enacted, That the said company may acquire and hold such real and personal estate as the practical use and working of said road may require, under such regulations and subject to such taxation as is imposed by law on similar property located in the city of Washington.

SEC. 5. And be it further enacted, That this act take effect from the time of its passage.

168 No. 1.

Order pro confesso vs. *Riggs & Co.—Filed Octo'r* 3, 1864.

THE WASHINGTON, ALEXANDRIA and Georgetown R. R. Co.
vs.
MAYOR, ALDERMEN AND BOARD of Common Council of Washington City *et al.*
} No. 56; Equity docket 7.

On motion of Stewart & Riddle, solicitors for complainants, to take the amended bill for confessed against each of the defendants, it appearing to the clerk that, though the subpœnas to answer were returned "Non sunt Lenghan and Kilbreth; summoned the others; together with copy of amended bill, May 4, '64," yet none of the defendants to said amended bill have appeared or answered the same; therefore it is taken for confessed as to Geo. W. Riggs and A. T. Kieckhœfer, as Riggs & Co., and James C. McGure & Co.

By the clerk.

169 No. 2.

Motion of defendant McGure for leave to appear and answer.

W. A. & G. R. R. Co.
vs.
THE MAYOR, ALD'N AND COM. COUNCIL of Wash'n and others.
} 56 Eq.

Nov. 12, 1864.

James C. McGure, defendant in the above-entitled cause, by his attorney, W. F. Mattingly, moves that the decree pro confesso en-

tered against him at the October rules, 1864, be set aside, and that he have leave to appear and answer.

(Signed)

W. F. MATTINGLY;
Sol. for J. C. McGuire.

Order compl't's solicitor to vacate pro confesso vs. *def't J. C. McGuire.*

DEC. 13, 1864.

Strike out the decree pro confesso in this cause against J. C. McGuire, with leave to answer.

(Signed)

STEWART & RIDDLE,
For Pl'ffs.

170 No. 3.

Supreme Court of the District of Columbia.

Answer of James C. McGuire.—Filed Dec'r 13, 1864.

JAMES C. MCGURE *ats.* ALEXANDER HAY *et al.* } No. In equity.

To the honorable the judges of the Supreme Court of the District of Columbia:

The answer of James C. McGuire, one of the defendants to the bill of complaint of Alex'r Hay et al., complainants, against himself and others in equity exhibited.

This defendant, saving and reserving to himself all benefit of exceptions to the errors, imperfections and uncertainties in said bill of complaint contained, for answer thereto and to so much and such parts thereof as he is advised that it is material and proper for him to make answer to, answering says: That he cannot admit the statements of fact in said bill of complaint contained, and as to the allegations therein contained affecting himself, he declares that

171 the same are entirely erroneous. This defendant denies and says that it is not true that any of the bonds or certificates referred to in the bill of complaint were paid or delivered to this defendant in payment or in discharge of an individual debt of James S. French, as charged in said bill of complaint. This defendant denies that he ever loaned any sum of money, so far as he can recollect, to said James S. French on his individual credit.

This defendant, answering the interrogatories in said bill of complaint contained, in answer to the first interrogatory, he says: That he now holds, claiming to be the absolute owner thereof, eight of the bonds or certificates of the Alexandria and Washington R. Road Company, guaranteed by the corporation of Washington, referred to

in the bill of complaint, which bear date on September 26, 1855, and are numbered respectively 83, 84, 85, 86, 87, 88, 89 and 90. The first two of said bonds or certificates being each for the sum of one thousand dollars, and the other six thereof being each for
172 the sum of five hundred dollars. That he holds the same as his sole property, and does not hold any of said bonds jointly with any other person.

In answer to the second interrogatory he says, that he cannot with absolute certainty state from what person he received said bonds or certificates, but answering according to the best of his recollection and belief, says, that he received the same from Walter Lenox, the treasurer of said r'road company, or from the corporation of Washington, on an order from said Lenox. This defendant says, that some in August, 1855, application was made to him to advance money to enable said railroad company to pay for iron rails which were necessary for the completion of a portion of said road, extending through the city of Washington, and an appeal was made to him as a citizen of Washington, interested in its prosperity, to make such advance, it being represented to him by said Lenox and others that he would be made secure by having bonds or certificates of said rail-
173 road co., guarantied by the corporation of Washington, deposited with him. This defendant recollects having had interviews with one or more of the members of the committee of the corporation of Washington having the matter in charge, as well as said Lenox as treasurer of said company, in reference to making such advances. This defendant, further answering, says, that in consequence of the appeals made to him to that end, he did on September 5th, 1855, advance the sum of $3,000; on September 29th, 1855, the sum of $500; and on October 11th, 1855, the further sum of $500. That said sums of money were paid to said Lenox as treasurer of said r'road company, for the purpose of being applied to the payment for iron rails to be used in constructing said road; and this defendant verily believes and charges that the said amounts were so applied. This defendant further says, that said sum of $3,000 was advanced before said bonds or certificates now held by him were actually
174 issued, but upon the express promise and agreement of said Lenox and one or both of the committee (Jno. H. Houston and Jno. T. Clements) representing the corporation of Washington that such bonds or certificates would be issued and placed in his hands as security. This defendant further says, that on or about September 29th, said bonds or certificates were delivered to him by said Lenox, or received by him from the corporation of Washington, on the order of said Lenox, and that on or about the same date he advanced one of said two sums of $500, and shortly afterwards the other sum of $500, and that he made said advances on the security of said bonds or certificates deposited with him as aforesaid. This defendant further says, that he subsequently advanced the said Lenox on said bonds or certificates the sum of $15 on February 7th, 1856; the sum of $30 on July 16th, 1856; the sum of $45 on December 27th, 1856; and the sum of $100 on Dec'r 23d, 1857. That at the time

said last-mentioned sum of $100 was paid this defendant objected to making any further advances, on the ground that the bonds or
175 certificates were [were] not worth any more, and that said Lenox then proposed to sell said bonds or certificates to him and to treat the advances made as payment on account, and said last-mentioned sum of $100 as a payment in full therefor. This defendant, believing that said Lenox had full power and authority to dispose of said bonds or certificates, absolutely paid to him said last-mentioned sum of $100 in full for the purchase thereof, and has since that time held the said bonds or certificates as his sole and absolute property, without question on the part of any person or corporation other than the complainants, who now seek to controvert his right to the same. This defendant avers and charges, that said Lenox had full power and authority to sell said bonds or certificates to him absolutely, and that he did sell the same to him as herein set forth.

In answer to the third interrogatory he says, that he cannot make any further or other answer than that made in reply to the second interrogatory. That he cannot at this time recollect all the
176 particulars of the transaction, about seven years having elapsed since the matter was closed, from which time he has not had occasion to recur to the original transaction. This defendant repeats that he made the said advance of $4,000 to said Lenox as the treasurer of said railroad company, to be used for the purchase of iron rails for the construction of said road, as before mentioned, and that he did so after interviews with the members of the committee on the part of the corporation of Washington, and with their approval. This defendant does not recollect for what purpose the small amounts hereinbefore mentioned as paid to said Lenox were advanced, and can only say they were made on security of said bonds or certificates. This defendant submits that it was not necessary for him to see to the application of the money or ascertain for what purpose it was to be used. That said Lenox was the treasurer of said company, and had had the possession or control of said bonds or certificates,
177 and the first advance had been made to and through him, and the said bonds or certificates were passed to this defendant by him with the consent and by the authority of the said "Alexandria and Washington Railroad Company," and of the corporation of Washington.

In answer to the fourth interrogatory he says, that he never did make any demand on said railroad company for the payment of principal or interest on said bonds or certificates, and never did make any protest against said company for the non-payment thereof. And further says, that said bonds or certificates are not yet due and payable. This defendant admits and says that the interest on said bonds up to July 1st, 1863, has been paid by the corporation of Washington. This defendant avers and claims that he is the bona fide holder of said eight bonds or certificates for a valuable consideration, and that the said "Alexandria and Washington Railroad Company" and said corporation of Washington are both liable to him on said
178 bonds or certificates, and he claims the benefit of the deed of trust aforesaid to Joseph H. Bradley and A. Thos. Bradley given by

said railroad company to secure the payment of the same. This defendant denies that said complainants or either of them acquired any rights in reference to the property of said "Alexandria and Washington Railroad Company" under the sale made by Joseph B. Stewart, esq., and denies that said corporation was thereby disolved or in any way affected The defendant denies the right of said complainants to maintain the suit in the manner and for the purpose for which they have instituted the same. This defendant denies the right of the complainants to the relief prayed, or to any relief on the case presented by them, and claims the same benefit of this defence as if he had demurred to said bill of complaint. This defendant having answered fully, prays that he may be dismissed hence with all his costs, &c., &c., and he will ever pray, &c., &c.

J. C. McGUIRE.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Before the subscriber, a justice of the peace in and for the county aforesaid, on the sixth day of Dec'r, 1864, personally appeared James C. McGuire, who has signed the foregoing answer, and having been first duly sworn, does say, that the statements contained therein are true to the best of his knowledge, information and belief.

[SEAL.] EDGAR H. BATES, *J. P.*

[5-c. rev. stamp cancelled.]

179 No. 4.

Supreme Court, D. C.

Notice to take testimony.—Oct. 29, 1866.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN R'road Company *vs.* THE CORPORATION OF WASHINGTON, BRADLEY and others. } 56. Eq. Doc. 7.

Take notice, that the defendant will on Monday, the 29 day of October, 1866, at the office of the auditor of this court, proceed to take the testimony of Walter Lenox and such other witnesses as may then and there, or at any adjournment thereof, be produced, to be used on the hearing of this cause. The testimony to be taken at 11 o'clock a. m.

BRADLEY, *For Def't.*

To R. J. Brent, esq., and Jas. B. Stewart, esq.
19th Oct., 1866.

Service acknowledged, date being altered to the 29th.

Service acknowledged.

J. B. STEWART.

Postponed by consent to Friday, 2d Nov., 1866.

BRADLEY, *For Def't.*
J. B. STEWART.

180 No. 5.

Depositions on behalf of defendants.—Filed Oct. 2, 1867.

Published in open court Oct. 2d, 1867, by order of the court.
R. J. MEIGS, *Cl.*

WASHINGTON, ALEXANDRIA AND GEORGETOWN R. R. Co. *v.* THE CORPORATION OF WASHINGTON *et als.* } In equity.

Questions on the part of defendants to James S. French:

First. Please to state whether you were or not at any time president of the Washington and Alexandria Railroad Company; and if yea, during what period of time.

Second. State if you have any knowledge of the fact of any money having been raised by said company on the scrip issued by it and guaranteed by the corporation of Washington and secured by deed of trust to Joseph H. and A. Thomas Bradley. If you have such knowledge state in narrative form all you know as to the amount so raised, from whom the same was obtained, and how the same was disposed of and applied; and what portion was applied to
181 the uses and purposes of said railroad company.

BRADLEY & DAVIDGE,
For Defendant.

Deposition of James S. French, for defendant.

And the said James S. French, being about the age of 60 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause, I did carefully examine said James S. French, and he did thereupon depose, testify and say as follows:

In answer to questions on the part of the defendants:

In answer to question first witness saith: I was the president of the company from the time of its organization; I think in 1855 up to the present time.

In answer to question second witness saith: The guaranteed bonds of the city in favor of the railroad company, meaning
182 thereby the sixty thousand dollars of the certificates of the Washington and Alexandria Railroad Company, were drawn by Mr. Lenox from the mayor of the city, John P. Towers, at that time, in sums to meet the requirements of the railroad company, and were deposited with Riggs & Co. to a large amount, I think about forty-seven thousand dollars, who gave us as officers of the company the money on them, and which sums of money were all appropriated towards the construction and the operation of the road; including therein the purchase of the Washington and Alexandria turnpike, for which we paid between twenty-four and twenty-five

thousand dollars. Besides the certificates deposited with Riggs & Co. Mr. Lenox deposited, I think, five thousand dollars of the bonds with Mr. McGuire who advanced the money on them. I think Riggs & Co. retained five per cent. I don't remember the margin retained by McGuire.

Mr. Lenox also deposited with the Ohio Life Insurance
183 Company, New York, I think about eight thousand dollars in certificates, obtaining the money therefor, all of which moneys were by Lenox paid over to me and used in the construction and operation of the road; meaning thereby for obtaining the necessary machinery for constructing and operating the same.

When I say deposited I mean to qualify that by saying that he sold to these parties.

I think all these bonds, or certificates as they are called, were parted with nearly at their par value, and that all the moneys derived from this source was expended in carrying out this railroad enterprise.

Col. Joseph B. Stewart objects to all answers and parts of answers given by the witness wherein he says "I think," or speaks from impression.

Cross-examined.

By Col. Stewart:

Question 1. When was the Washington and Alexandria Railroad Company organized?

Answer. I think in 1854 or 1855, I am not very positive as
184 to date, unless I could refer to the papers.

Question 2. What amount of capital stock was subscribed to the company, and by whom?

Answer. Two thousand shares, and were subscribed by Mr. Lenox, myself, and Geo. French.

Question 3. Were there any other stockholders of the said company at that time?

Answer. None.

Question 4. Did you have a book of subscriptions of said stock?

Answer. We had.

Question 5. Where is said subscription book?

Answer. I don't know. All the books of the company containing their early proceedings were placed in the hands of J. Lewis Kenzie, and were in his possession prior to the war. All the proceedings of said company containing all the facts relative to said company were exhibited in the case of Alexandria and Washington Railroad Company vs. Fowle, Snowden & Co.

Question 6th. What amount of subscription on said stock
185 subscribed to was paid, and by whom?

Answer. Two per cent. on the amount subscribed to, and by the parties thereto at the time of organizing the company.

Question 7. Was said payment made in cash to any officer of the company authorized to receive the same? and, if so, state who the officer was.

Answer. It was; to the treasurer of the company, and I think Walter Lenox was the treasurer.

Question 8. Was not said payment made by check to the even amount of four thousand dollars?

Answer. I do not remember; I only remember that the requisites of the law was complied with.

Question 9. Was there not such a check given as stated in the last question?

Answer. I do not remember; I only know the amount required was paid up.

Question 10. Was there any stock issued of said company at the time of said subscription?

186 Answer. There was assigned to each party the proportion to which he was entitled.

Question 11. Please answer the question whether there was any stock issued at time of said subscription.

Answer. There was assigned to each party the proportion to which he was entitled to at the time.

Question repeated direct, and asked if there was any stock issued at all.

Answer there was assigned to each party subscribing thereto the amount of stock to which his subscription entitled him; whether certificates of the stock were at that time awarded or assigned I do not remember.

Question 12. Did the Alexandria and Washington Railroad Company ever have or issue in written or printed form any scrip or paper purporting on its face to invest the holder thereof with a right to any share or shares of the stock of said company? If so, state for what amount, and to whom issued.

187 Answer. The stock was assigned on the books. None of it was ever offered in the market after the books were closed. I never obtained any certificate of the stock to which I was entitled. I do not know whether others did or not. I was not the custodian of the stock-book. I never heard of any of it being offered for sale.

Question 13. Was there a stock-book, or book containing certificates in scrip or print for the use of the stockholders of said company, and did you, as president of said company, ever have, see, or handle, such certificate?

Answer. There was a stock-book, which I distinctly remember, showing the proportion to which each was entitled, but whether it was written or printed I do not remember.

Question 14. Who were the persons entitled to said stock as it stood on the book of which you speak?

188 The defendants by their counsel, object to all and each and every of the questions put by the complainants' counsel to this witness, James S. French, as wholly irrelevant to the matters submitted to the auditor in this case, and as not in any way connected with or drawn out by the examination of said witness-in-chief, and they insist that the commissioner shall not put any further

questions of like nature to the said witness, and instruct the witness that he is not obliged to answer the same.

The complainants, by their counsel, protest against the interruption interposed by the counsel for the defendants, in the midst of the examination of defendants' witness, and in his hearing, and insists that the questions propounded are strictly pertinent to the matters at issue between the complainants and the defendants, as made by their bill, amended bill, answers and pleadings; that such testimony is intended to be relied on in the final hearing of this
189 cause to invalidate the said certificates of debt issued by the said Alexandria and Washington railroad, and endorsed by the coporation of Washington, and insists that all questions propounded in reference to any of the matters so at issue in this cause shall be put by the commissioner, and answered by the witness.

(NOTE.—When the cross-interrogatories propounded to the witness were put, the counsel for the defendants were absent, and immediately on the appearance of one of them, Mr. Davidge, the foregoing objection was made, and directed to be entered by the commissioner.)

JNO. J. JOHNSON,
Ex'r in Chancery.

Answer. I decline to answer.

Question 15. Had you a board of directors at the time of the subscription of the stock?

(Objected to by the defendants' counsel.)

Answer. I decline to answer as irrelevant under the order.

190 Question 16. You have spoken of sixty thousand dollars of certificates of debt, which you say were issued by the Alexandria and Washington Railroad Company; please state by whose authority said certificates were so issued, whether the same was done by you as president, or yourself and Walter Lenox, as president and secretary, or did you act under authority of the board of directors?

Objected to by defendants' counsel as irrelevant and not responsive to the examination-in-chief.

Thereupon complainants' counsel declares the object and aim of said interrogatory to be to elicit facts known to the witness, tending to show that said certificates were issued and used without any authority from said corporation; and the complainants' counsel claims that said interrogatory is part and parcel of the exercise of a legal right of cross-examination of the said witness, touching the
191 matters testified to by him in chief, and desires the witness to be informed by the commissioner that he is not bound to be governed by the advice or instructions of defendants' counsel.

The defendants' counsel insists on his objection.

Answer. I decline to answer, simply on the ground that I do not regard the question as pertinent under the order of reference. But hold myself ready to answer all such questions touching the organization or operations of the company, in any suit instituted to test the validity of such proceedings.

Complainants' counsel requests the commissioner to instruct this witness that by a bill, and amended bill, filed in the Supreme Court in the District of Columbia, alleging that the said certificates at issue in this cause are invalid, for the reason that the same were issued by the said Alexandria and Washington railroad, without the
192 sufficient authority of said company, or by any order of its board of directors, and that the same are invalid, and the same and other reasons. The deed of trust to the corporation of Washington, purporting to indemnify it, by guaranteeing said certificates, is likewise null and void; that such injunction has been granted and is now in force; but by the terms of said injunction, as stated in the order of reference as referred to by the witness, and under which he declines to answer upon its face, purports to hold open and reserve all such questions to be further considered, in the discretion of the court, on a final hearing.

The commissioner declines so to instruct the witness as requested by Col. Stewart for complainants.

The question last put repeated.

The answer to 16 question repeated.

Question 17. Where was said certificates of debt prepared and by whom?

Answer. I decline to answer.

Question 18. What was the day and date on which said
193 certificates were issued?

Answer. I don't remember.

Question 19. Were they or not issued or purported to be issued on the 18th day of April, 1855?

Answer. I decline to answer.

Question 20. Please examine exhibit "C," filed with the bill of complaint in this cause, and state whether it is or not a correct copy of one of said certificates.

(Objected to by defendants' counsel unless exhibit "C" is produced.)

Answer. I cannot tell, unless I could see the exhibit.

Question 21. Is or is not, to the best of your knowledge and belief, the following a correct copy of one of said certificates, to wit, exhibit "C?"

$1,000. DISTRICT OF COLUMBIA. No. 10.

The Alexandria and Washington Railroad Company acknowledge themselves to be indebted to ——— ———, or the holder hereof, in the sum of one thousand dollars, current money of the
194 United States, payable at the banking house of Riggs & Co., in the city of Washington, on the first day of January, in the year eighteen hundred and fifty-nine, with interest thereon at the rate of six per cent. per annum, semi-annually, on the first day of July and the first day of January ensuing the date hereof, until the said principal sum shall be paid.

This certificate, and all rights and benefits arising therefrom, transferable by general or special indorsement, or by delivery.

In testimony the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by the president and treasurer, this eighteenth day of April, eighteen hundred and fifty-five.

JAS. S. FRENCH, *President.*
WALTER LENOX, *Treasurer.*

The original exhibit "C" was not produced or shown to witness, but the foregoing was read to him by Col. Stewart, from a printed pamphlet in his possession.

J. J. JOHNSON, *Com'r.*

195 Answer. I do not remember to have seen one of these original certificates in the last ten years, and therefore cannot say whether it is an exact copy or not.

The complainants' counsel states that reason why he could not present to the witness the original certificate or paper marked exhibit "C," is, that the same is in the possession of or under the control of the defendants, the coporation of Washington; and now gives notice that he requires the production of said certificate No. 10, to be read on the final hearing, in support of the question last propounded.

Question 22. You have stated that you were and have been president of the Alexandria and Washington Railroad Company from its organization, in 1854 or 1855, up to the present time, which is a period of nearly 13 years; if so, you still state that you, as the executive officer of said company, have not seen its said evidences of debt during that period, though you say you negotiated the
196 same and got the money thereon.

(Objected to by defendants' counsel, because the witness has not stated that he had not seen the evidences of debt of said company during said term, or that he had negotiated the same within that period of time.)

Answer. I did not say as stated in the interrogatory above. I said and reitterate that, to the best of my knowledge, I have not seen one of the original certificates within the last ten years.

Question 23. Had you not during that period occasion to look at or to know the condition of the evidences of debt of said company, so as to know where they were, or provide means for the payment of the principal or interest on the same?

(Objected to by defendants' counsel as irrelevant, and not connected with the examination-in-chief.)

197 Answer. All I know is, that we honestly owed the sixty thousand dollars of certificates, and that I several times paid the interest on them, being unable to pay the principal. I never found it necessary to find who owned them.

(Complainants' counsel excepts to the answer as evasive and not responsive.)

Question 24. You have just stated that you had several times paid the interest on said certificates of debt; how many of such payments of interest did you make?

Answer. I think I paid two years' interest, thirty-six hundred dollars.

Question 25. To whom were such interest or payments made, where were they made, and at what time?

Answer. Not being expected to be called upon to state the exact time, I will not be positive exactly as to dates. I remember to have paid through Wm. H. Fowle, or the firm of Fowle, Snowden & Co., eighteen hundred dollars on the first of January, 1857, which was paid to Geo. W. Riggs & Co. This is impressed on my mind
198 by circumstances connected with that payment; and in a statement from Riggs the other day, I see he admits that prior to this, a payment of some thirteen hundred or more dollars. There were also some other payments made through the agency of Case Brothers, of Alexandria, all of which payments are distinctly set forth in the record of the Alexandria and Washington Railroad Company, in the Circuit Court of Alexandria v. Fowle, Snowden & Co., in which the rights of the corporation of Washington to recover against the railroad company were assailed by Fowle, Snowden & Co., and the rights of the corporation to recover said certificates and interest was sustained by a decree of that court.

(Complainants' counsel excepts to all that part of answer not responsive to question, it being gratuitous on the part of the witness.)

Question 26. In the payments of interest you speak of
199 on the part of Fowle, Snowden & Co., of Case Brothers, was or not the money so paid raised by the creation of the lien on your said railroad company; and was or not the issue between the said Fowle, Snowden & Co. and the corporation of Washington brought about because of said lien and the payments to the corporation?

(Objected to by defendants' counsel.)

Answer. I don't think there was a dollar raised by the lien at all. To go into a history of the cause of litegation between the Alexandria and Washington Railroad Company, I deem it superfluous and unnecessary, and not at all called for by the order of the court.

(Complainants' counsel excepts to answer as not responsive to the question, which does not call on the witness, for a history of said litigation; but simply whether the money he speaks of having been paid, forms part of a lien on said road in favor of said Fowle, Snowden & Co.

Question 27. Was there or not a deed of trust executed on
200 the part of the Alexandria and Washington Railroad Company to the trustees of the corporation of Washington as security for guaranteing said sixty thousand dollars of said certificates of debt?

(Objected to because it must have been in writing, and the deed must speak for itself.)

Answer. There was.

Question 28. What was the date of the execution of the deed?

Answer. The deed speaks for itself. I do not remember the date.

Question 29. Were or were not said certificates issued and put in circulation previous to the date of said deed?

(Objected to as irrelevent.)

Answer. Prior to the date of said deed the said railroad company, to the best of my knowledge and belief, did not owe a dollar in the world, and not a dollar was drawn on account of said certificates until after the deed was executed and recorded. The deed
201 was recoreded first in Washington city, and a long time elapsed before I could get the deed to have it recorded in Alexandria county; and when said deed was recorded in Alexandria county, I recorded a copy which I regarded as valid and binding at the time, but difficulties growing out of it of a technical character, I recorded the original as soon as I could get it.

Question 30. The question I ask is not as to the state of indebtedness of the road; but whether the certificates themself were not issued and circulated previous to the execution of the deed.

Answer. Not one of them. Our only claim to the guarantee of the corporation was accepted and fulfilled before we had a right to call upon them for a dollar.

Question 31. Were or not the certificates issued on the 18th day of April, 1855, and was or was not the deed of trust executed on the 19th day of April, 1855?

(Objected to by defendants' counsel.)

202 Answer. That I do not remember, but I do remember that John T. Towers, the mayor of Washington, would not advance a dollar until I satisfied him, and it gave us great trouble to do so, that sums of money advanced were not only to be applied to the construction of the road, and operating of the same, but that the said sixty thousand dollars, when coupled with our own private means, meaning the means of the stockholders of the company, would put the road in successful operation, and that he suspended the issue of said certificates on several occasions until the company satisfied him that with the private means of the stockholders and the guaranty of the city of Washington, we could successfully carry through this enterprise.

This answer, from and after the words "but I do remember," excepted to by counsel for complainants, as not responsive to the question.

Question 32. Where was the office of the Alexandria and Washington railroad on the 18th and 19th April, 1855?

203 (Objected to by defendants' counsel.)

Answer. In a portion of a building rented by Walter Lenox, a small two-story house on Louisiana avenue, adjoining, I think, or near to the residence then claimed by Richard Wallach in the city of Washington. This was prior to the completion and operation of the road. After the road was in operation, the first office we had in the city, to the best of my recollection, was that now occupied by Steinmetz, the hatter, opposite the Avenue House.

Question 33. Had said Alexandria and Washington Railroad Com-

pany any charter in legal existence in the District of Columbia on the 18th or 19th April, 1855?

(Objected to by defendants' counsel.)

Answer. On the 3d day of August, 1854, I think the Congress of the United States passed an act authorizing the Alexandria and Washington Railroad Company to bridge the Potomac, at of
204 above the aqueduct, above Georgetown, and to occupy any of the streets of the city of Washington, with the exception of Pennsylvania avenue, and to extend its road to the Baltimore and Ohio railroad depot; and that under said authority, we laid the tract from the Baltimore depot to the Long Bridge. I say that this was done by virtue of that act of Congress, and when we went before the councils of Washington to ask assistance, they desiring that the road be established at the point of the Long Bridge, granted us assistance, taking from us a pledge that we would cross the river only at the point of the Long Bridge, and the sustaining up the Long Bridge, or a bridge at that point, I always regarded as a moving inducement of the City of Washington to aid usin the enterprise.

Adjourned till nine o'clock, Tuesday, the 5th of March.

And to wit, on this 5th day of March, A. D. 1867, met
205 pursuant to adjournment, when the witness, James S. French, further deposes and saith as follows:

Question 34. In disposing of the said sixty thousand dollars of said certificates endorsed by the corporation of Washington, did you, or not, or were they, or not, disposed of in strict accordance of the terms of the ordinance of the corporation of Washington authorizing said endorsement?

Answer. The witness prefers that counsel should be present before answering. I do not remember of having disposed of any of them myself. The checks were generally, I think, drawn by Mr. Lenox, the treasurer of the company. What were the exact terms of the ordinance, I do not remember. I know that the money came through Riggs, for a large portion of these certificates, and the remainder of them were negotiated by Mr. Lenox with McGuire & Co., of this city, and
206 the Ohio Trust Insurance Company of New York.

Question 35. If you did not participate in the negotiation of said certificates, how can you state that you know what money was received for the same, of what amount, from whom, or by whom?

Answer. When the company required means derived from the certificates, I generally went with Lenox to Mr. Towers, the mayor, and made known to him what we required the money for. He would give Lenox these certificates; we would then give go to Riggs & Co.; he would take the certificates and pay over the money to Lenox, which was handed over to me or deposited to my credit, and I would then check out the same. Prior to this, we had made an arrangement with Riggs under which he was to negotiate the bonds for us, and whether negotiated or not, he advanced the money on them.

207 Question 36. From your last answer, it appears that you were present and participated directly in the negotiation of

said certificates. Now, please state who constituted the "we" you speak of as having made this arrangement with Mr. Riggs, and what was its exact terms.

Answer. The arrangement I refer to was an understanding with Riggs between myself, as president, of the company, Lenox, as treasurer of the company, that he would advance us the money upon the certificates of the corporation. There was no agreement to pay him anything for so doing, but it was generally believed at the time that the corporation certificates would sell about par; the amount called for upon the face of the certificates was for a long time paid. When he was unwilling to advance more money on them, he retained, as I understood at the time, about five per cent., which he still holds, as I have heard and believe, subject to the credit of the company in a settlement. These steps were taken subsequent to all the preliminary proceedings required under the statute law of Virginia in the organization of chartered companies.

Question 37. Were there any other persons privy with that arrangement or negotiation with Mr. Riggs besides yourself and Mr. Lenox. If so, who?

Answer. Towers knew all about it. And it seems to me a committee was appointed, either by the common counsel or board of aldermen, I don't remember, to advise and see to the proper application of the funds. It has been so long since this occurred, and not having referred at all to the matter, the exact circumstances I do not remember, only the general fact that the proceeds of the certificates were applied in carrying out the railroad enterprise.

Question 38. You said that you made known to Mr. Towers, the mayor of Washington, the objects for which you needed and intended to apply the proceeds of said certificates. Please state whether you likewise made known the object to which you intended to apply the proceeds of said certificates to the committee which you say was appointed to act with Mr. Towers to direct the application of said fund.

(Objected to by defendants' counsel. The question assumes that the witness has said that he made known to Mr. Towers the object for which we needed and intended to apply the proceeds of said certificates, when the witness has only said "we made known to Mr. Towers what we required the money for.")

Answer. At Towers's office we frequently had meetings, the committee being present often, when all the affairs of the company were discussed, and such steps were taken and agreed upon as would further the objects of the company.

Question 39. In these general meetings with said committee the object they had in view was, or was it not, to see to the application of said fund?

Answer. It was not; it was merely to compare opinions and to advance the enterprise; they were friends of it.

Question 40. In what respect, then, did you consult or co-operate with the committee you speak of as having been appointed to see to the application of the fund?

Answer. The committee was a body friendly to the enterprise, as well as the mayor. I suppose the committee attended to their duties. What they exactly were I do not remember. The railroad company had privileges to ask, both of the city councels and of Congress, and we used to compare opinions and devise the means by which we could obtain those privileges. By devising means, I do not mean to say that we raised or expended any money for that purpose, but simply how we would devote our personal services towards obtaining that end.

211 Question 41. You say that you suppose said committee discharged the duties for which they were appointed. Do I understand you to say as forming part of their duty to confer with you and Mr. Lenox on the subject of obtaining legislation for said road, or securing privileges for it, municipal or national, or was simply their duty to direct and supervize the application of the proceeds of said sixty thousand dollars' certificates?

Answer. The exact duties of this committee, as I have before stated, I do not remember. The circumstances referred to occurred more than ten years ago, and I have had no occasion to refer to them. My recollection is, that the committee referred to was a sort of advisory board. They were prominent and influential citizens, and friendly to the enterprize.

Question 42. The said committee, acting as such advisory board, did they or not give general directions and advice as to the application of the proceeds of said certificates?

212 Answer. I don't remember what.

Question 43. As you seem to be not very distinct in reference to said committee or its duties, please look at the second section of the public acts of the corporation of Washington, approved Feb'y 8, 1855, which reads as follows:

Sec. 2. And be it enacted, That the mayor and one member from each board, to be selected by the presiding officers thereof, be appointed a committee, under whose direction the said certificate shall be issued, and the same, or the proceeds thereof, be applied exclusively to the making of said road: Provided further, That said committee shall be satisfied that the certificates above guarantied will ensure the completion and equipment of said road.

Approved February 8, 1855.

213 Mr. John H. Houston, of the board of aldermen, and Mr. John T. Clements, of the board of common council, were appointed the joint committee in pursuance of the above second section.

E. J. MIDDLETON,
Secretary of Board of Aldermen.
C. F. LOWREY,
Secretary Board of Common Council.

And state whether the above is the committee referred to as having conferred with.

Answer. That is the committee.

Question 44. Now please state if said committee, in their confer-

ences with you, had in view the discharge of the duties imposed upon them by the terms of said ordinance.

Answer. I have no doubt they had, as well as the other subjects of general interest I have referred to.

Question 45. Was the object to which the proceeds of and certificates were to be applied made known to said committee and directed by them, and did they concur in the appropriation of the proceeds of the same to such object?

214 Answer. I have no doubt that the object was made known to said committee, and I suppose they concurred. The mayor was the executive officer, and through him the certificates were received.

Question 46. Were said certificates sold or hypothecated?

Answer. Those given by Riggs were received by him as the agent of the company, to negotiate them.

Question 47. Your answer appears evasive. Please state, if you can, whether or not said certificates were or were not pledged, and money borrowed on them to be repaid out of the proceeds of the said certificates when sold.

Answer. I did not mean my answer as evasive. A certificate deposited with Riggs I have no doubt he regarded as pledged to him to secure advances made by him.

Question 48. By whom was the agreement to so pledge said
215 certificates negotiated, and by whom were they pledged?

Answer. I do not remember. The mayor, no doubt, knew Riggs would make the advances on the certificates.

Question 49. Was such agreement to pledge made by the mayor or the committee you speak of, or by the company?

Answer. It was impossible to recollect. All the circumstances occurred more than ten years ago, in a matter that I have had no occasion to refer to since.

Question 50. As you say you are the president of the Alexandria and Washington R'road Company, and have been since its organization up to the present time, was it not a matter of imperative duty on your part to look into and know the exact condition of said certificates and all about them?

Answer. I regarded that we bona fide owed the debt guaranteed by the city of Washington. I protected said debt by expensive litigation, and recognized said debt in all acts of the company
216 that could in any way invalidate it.

Question 51. Your answer evades the question asked. You are asked if you did not deem it your duty to know the condition of the certificates as president of the company which you say you have paid no attention to for the past ten years?

Answer. I did not say that I had paid no attention to the subject within the last ten years. The indebtedness of the company has been constantly present to my mind, and ever possible exertion has been used by the railroad company to advance its interests with a view to paying off all its liabilities; who held the certificates I thought it a matter of no importance; I only knew they were outstanding against the company.

Question 52. Did any holder or holders of said certificates ever apply to you or your company for the amount of the same, principal or interest?

Answer. I don't think the ever did. While we could pay
217 the interest, it was deposited in some banking house and the mayor notified of the deposit.

Question 53. When did you make said last payment of interest?

Answer. I will not say positively, as I have no references before me, but I think it was first of January, 1857.

Question 54. Why did you make no more payments after that period?

Answer. Because the company had not the means.

Question 55. You have stated that you consulted the committee appointed by the city councils to supervise the appropriation of said certificates; did you or not make known to them the objects for and to which you did apply the same?

Answer. I no doubt did in the conferences referred to with the committee.

Question 56. You have also stated that the Alexandria and Washington R'road Company did not owe, and was not indebted to
218 the amount of one dollar at the date of issuing of said certificates; now please state what was the exact condition of said road at the time in point of construction, that is, how far it was advanced towards completion, and what was required to complete it.

Answer. The railroad company, to the best of my belief, had no debts when the city agreed to guarantee our certificates; what was the condition of the road I do not remember, or how far we had progressed at that time; up to the eleventh of March, 1858, the company had expended over ninety-one thousand dollars in money.

Question 57. What amount of grading had been done on said road on the 18th April, 1855, and what amount of capital had been expended up to that time?

Answer. I do not remember.

Question 58. Had there been really any work done on the road at that date?

219 Answer. There had been expense incurred and work done; what was its exact character I don't remember.

Question 59. Was the condition of said road and the amount of capital necessary to complete it at the date referred to enquired into by the committe appointed on the part of the city councils?

Answer. I don't remember; I only know on several occasions the mayor refused to make advances until we satisfied him that with private resources outside of the assistance of the city we could carry through the enterprise.

Question 60. To what purpose was applied the first money received of the proceeds of said certificates?

Answer. I am enclined to think, towards the purchase of the turnpike. Prior to that time we had made various surveys and entered into some conditional arrangements and obtained from Congress the right to cross the river at or above the aqueduct, and to oc-

220 cupy the streets of the city, which route we contemplated adopting.

Question 61. From your last answer it would appear that at the date referred to, to wit, the 18th of April, 1855, your company had not fixed upon the exact location of your road; please state when such location was fixed upon.

Answer. It is not unusual for a company to expend both labor and money in determining the best route for its location; I do not remember the exact time.

Question 62. Was it not after the 18th of April, 1855?

Answer. I do not remember, but suppose not.

Question 63. What did you pay for said turnpike stock?

Answer. Its par value.

Question 64. Was such purchase of said turnpike stock reported by you to and considered by the committee appointed by the city councils?

Answer. I don't know; I suppose it was; it was a very notorious fact.

221 Question 65. What was the par value of said turnpike stock and how much did you pay for it in dollars?

Answer. I think par value was fifty dollars, and there was expended between 24 and 25 thousand dollars.

Question 66. What disposition was made of said turnpike stock after you purchased it, and into whose name was it transferred when so purchased?

Answer. For this I had obtained from the legislature of Virginia an act authorizing the turnpike company to sell to the Alexandria and Washington R'road Co. Lenox and myself conveyed to the railroad company a sufficient portion of the turnpike for its walls. We kept up the turnpike, and Lenox and myself deposited the turnpike stock with Corse & Bros., as collateral for money advanced, and which was applied in the construction of the road.

222 Question 67. The question I asked was in whose name the said turnpike stock was transferred at time of purchase. Was it or not purchased in the name of yourself or Walter Lenox and transferred accordingly?

Answer. I do not remember. It was known to all parties for what the turnpike was wanted, and the transfer was made so as to enable us to accomplish the object.

Question 68. Did you not handle and negotiate said turnpike stock as personal property of James S. French or Walter Lenox?

Answer. I rather think we did, for the purposes mentioned.

Question 69. Did you not execute a deed of trust on said road with Fowle, Snowden & Co. for the money advanced by said firm, or the preceding firm of Case Bros?

Answer. I did not. I executed a deed, but it would require a long narative to state its purposes and objects, which I decline to give as unnecessary.

223 Question 70. You have spoken of $8,000 of said certificates being deposited with the Ohio Trust Company in New York

by Walter Lenox. Please state who authorized said Lenox to deposit said certificates with said trust company, and was it done with the knowledge and approval of the committee appointed by the city counsel?

Answer. I don't know. The certificates were given him to be used for the use of the road.

Question 71. Did not said Lenox execute his individual note for money received from said trust company, and pledge said certificates as collateral?

Answer. The transaction occurred in New York, and I know nothing of it, except from hearsay.

Question 72. If you know nothing of the matter of said negotiation personally except by hearsay, how can you state that any money derived from said certificates last mentioned was used for the road?

Answer. Because the proceeds of the certificates were by
224 Lenox paid over to me on his return, and applied to the road.

Question 73. Do you know of your personal knowledge that any money that Mr. Lenox delivered to you was delivered upon said certificates? If so, what was the amount?

Answer. I do not. I only know that he went north with the certificates, and brought back money. I don't remember the amount.

Question 74. The five thousand dollars certificates, which you speak of as having been deposited with J. C. McGuire, were they or not pledged with him for money previously advanced, and if so, for what amount?

Answer. I never had a dealing with J. C. McGuire in my life; never heard of his advancing any money previous to the certificates. The negotiation of the certificates was conducted by Mr. Lenox, and the proceeds thereof used in the carrying out the railroad enterprise.

Question 75. How are you able to state that any money
225 was obtained from Mr. McGuire on said certificates for use of said road?

Answer. Because the certificates were delivered by the mayor to the railroad company for its use: Lenox took the certificates and brought back money. I suppose the money was raised on the certificates.

Question 76. Can you state any other specific appropriation of said money derived from said certificates within your own knowledge except that of the purchase of said turnpike stock; if so, what and to what purpose?

Answer. I think portions of the amount were paid to contractors for the purchase of iron, cross ties, &c., and for defraying expenses incident to the construction of the road. All the moneys so derived were expended in some one of these objects.

Question 77. Did you make known to said committee the amounts and object of these specific appropriations the proceeds of said certificates?

226 Answer. I don't think a dollar was ever drawn from Towers

without his knowing what we were going to do with it. He was exceedingly particular and gave us great trouble, but if he had any doubt about it, he would summon the committee.

Question 78. Was the proceeds of said certificates found sufficient to complete and equip said road?

Answer. With other resources, aided by said certificates, we did equip and put in operation said road, so far as we were permitted to do so.

Question 79. Please state what these resources are that you speak of?

Answer. Private means and the credit of the company.

Question 80. What amount was from private means, and what amount from the credit of the company were secured and applied?

Answer. Up to 11th of March, 1858, the company had ex-
227 pended over ninety-one thousand dollars in money; from what exact source the various sums composing that amount were obtained, I do not remember.

Question 81. On 11th of March, 1858, please state what was the full amount of record of the outstanding indebtedness of said company.

Answer. I do not know.

Question 82. Was there, or not, debts secured by deeds of trust and judgments of record to the amount of some hundred and fifty thousand dollars, besides interest accrued and accruing, and besides other miscellaneous debts not of record?

Answer. The deeds and judgments speak for themselves. The floating indebtedness was small. Its exact amount I do not remember. On one of those liens to secure $30,000 in coupon bonds which were sold by the company to Mr. Joseph Thornton, attorney in fact for Benjamin Thornton of England, and under which lien the Alexandria and Washington railroad was sold, the purchase
228 money for the bonds was not fully paid, only about $5,500 being paid, which I regarded as the amount of debt due by the company on that lien, and also the debt of Fowle; Snowden & Co., which appears to be large, is also entitled to a credit of $8,000 or $9,000, so that the indebtedness of the company really appeared larger than it was.

(Answer excepted to and not called for by the question.)

Question 83. You speak of a credit of $8,000 or $9,000 on the debt of Fowle, Snowden & Co. Was not that credit the result of the sale of the capital stock of the turnpike under execution or decree?

Answer. It was with the exception of two thousand dollars, which I paid in money.

Question 84. Of what did the equipment of said road consist in 1858?

Answer. Two engines, and, I think, six cars. I don't remember exactly.

229 Question 85. What became of said rolling stock?

(Objected to by defendant as having no pertinence to the enquiry before the auditor.)

Answer. It was moved out on the Orange road just previous to the occupation of Alexandria, with a view to its safety, as was the rolling stock of the Orange also.

Question 86. Was said rolling stock paid for in whole or in part by the proceeds of said certificates?

Answer. None of it was paid for by the proceeds of certificates.

Question 87. Was it removed by your order as president of the company?

(Objected to by defendant.)

Answer. It was, and carried up some few miles on the Orange road.

Question 88. State in what consisted its peril, that you found it necessary for its removal.

(Objected to for defendants.)

230 Answer. Long Bridge and the road adjoining it were occupied by the military. I could not use them, and prudence dictated that I ought to remove them where they would not likely be disturbed, as I thought at the time.

Question 89. What disposition did you subsequently make of said rolling stock?

(Objected to by defendants' councel as irrelevant.)

Answer. The confederate government took possession of them for the military, and used them. Most of the cars were lost and destroyed; the engines greatly injured, and were subsequently sold. When I got possession of them, which was some year or two afterwards, and paid for in the only currency we had, confederate money, and set apart for the benefit of the trust fund, to secure the debt due city of Washington.

Question 90. What amount did you receive; from whom, and where did you deposit the same?

(Objected to by defendants' counsel)

231 Answer. I had them repaired, and after paying repairs, the two engines I sold, I think, for $8,000 in confederate money. I sold them to a man named Ash, president of the Wilmington and Weldon railroad. They both went to North Carolina. I laid out the money in confederate bonds, and carried them with me in my wanderings.

Question 91. Did said bonds bear interest, and did you collect interest on the same? If so, how did you apply it, and where are said bonds now?

Answer. They bore interest, and I collected the interest. I held it as I did other moneys, subject to be paid over when called upon. I have a large amount of confederate bonds at home, and I do not know whether they are among them or not. The engines I did not wish to sell, but they were standing out exposed to the weather, not even on a track, for a long time. I could get no shelter for them, and to avoid entire loss I repaired them and sold them, as above stated.

232 Question 92. Please state whether said road earned sufficient to pay its repairs and working expenses from the time it

commenced running, in 1858, to the period you ordered the removal of rolling stock, in 1861.

(Objected to by defendants' counsel.)

Answer. Sometimes it did, and sometimes it did not.

Question 93. Who was the contractor for building said road?

(Objected to by defendants' counsel.)

Answer. There were differerent contractors on different parts; the whole was not left to anybody.

Question 94. Was E. S. Boynton conductor and superintendent of said road?

(Objected to.)

Answer. He was in the employment of the company, on the road, to do what was required of him, a part of the time.

Question 95. Had you not a superintendant and treasurer by the name of Job. Carson?

(Objected to by defendants' counsel.)

Answer. He was not.

Question 96. Did you ever see the handwriting of said Car-
233 son? If so, look at paper now handed you, and state whether the same is in his handwriting, and whether the same is a copy of a report made by him in reference to said road to the board of public works in Virginia, as superintendant and treasurer of said company.

(Objected to by defendant.)

Answer. I know the handwriting, and the paper shown me is not his handwriting. I can't say whether it is a copy of a report made by him or not.

Question 97. In whose handwriting is said paper?

(Objected to by defendant.)

Answer. I decline to answer.

(The paper herewith filed, and marked exhibit J. C. No. 1.)

Question 98. Please state when you were first elected president of the Alexandria and Washington railroad.

(Objected to.)

Answer. I don't remember.

Question 99. Who composed your board at time of said
234 election?

(Objected to.)

Answer. I don't remember.

Question 100. How often and when were you subsequently elected?

(Objected to.)

Answer. I don't remember.

Question 101. When and where were you from the month of May, 1861, and for the next five years ensuing?

(Objected to.)

Answer. A part of the time with my family, in Richmond, and part of the time in Carolina. When I left Alexandria, 1861, I joined my family, who had gone on a visit to some relatives in North Carolina.

Question 102. Was or was not said Alexandria and Washington Railroad Company wholly unable to pay its debts, and in a state of absolute insolvency at the time you left, and had it not wholly failed to earn sufficient to meet or pay its debts from the time of its construction?

235 (Objected to.)

Answer. It was unable to pay its debts as they matured, but I regarded the road as worth far more than its indebtedness. It paid its expenses a portion of the time, and when it did not, I furnished the means to carry it on, advancing it in value every day, and striving to obtain from Congress the right to cross the river at the Long Bridge.

JAMES S. FRENCH.

Sworn to and subscribed before me this 5th day of March, A. D. 1867.

JOHN J. JOHNSON,
Examiner in Chancery.

In pursuance of due notice served upon the solicitor of J. B. Stewart, complainant in this cause, to meet at my office, to take testimony on the part of the defendants, no one appearing for the complainants, it was, on motion of the defendants' solicitor, ordered that the examiner meet and adjourn from day to day at the same

236 hour and place until further requested by the defendants.

J. J. JOHNSON,
Examiner.

And, to wit, on this 13th day of June, A. D. 1867, met, pursuant to the above, and adjourned till to-morrow, the 14th inst.

J. J. JOHNSON, *Examiner.*

And to wit, on the 14th day of June, A. D. 1867, met pursuant to adjournment, and the complainant not being present, nor the defendants' counsel, adjourned till to-morrow, 15th inst., at same hour and place.

J. J. JOHNSON, *Examiner.*

And, to wit, on this 15th day of June, A. D. 1867, met pursuant to adjournment, and adjourned till Monday, the 17th inst., at the same hour and place. None of the parties present.

J. J. JOHNSON, *Examiner.*

237 And, to wit, on this 17th day of June, A. D. 1867, met pursuant to adjournment, and, at the request of defendants' counsel, adjourned till to-morrow at 3 o'clock, at the same place. The complainant and his counsel being absent.

J. J. JOHNSON, *Examiner.*

And, to wit, on this day, 18th June, 1867, met pursuant to adjournment, and the testimony of Walter Lenox, in chief, was closed. Adjourned till to-morrow o'clock.

J. J. JOHNSON, *Examiner*.

And, to wit, on the 19th of June, A. D. 1867, met pursuant to adjournment, and adjourned till to-morrow, at the request of defendants' counsel.

J. J. JOHNSON, *Examiner*.

And, to wit, on the 20th day of June, 1867, met and on application of defendants' attorney, adjourned till the 21st inst.

J. J. JOHNSON, *Examiner*.

238 Walter Lenox, being duly depose, testifies and says as follows, in answer to interrogatories filed in the case:

Answer to first interrogatory: In the year 1854 I became connected in the interprise of a railroad connection between Washington city and Alexandria, under a charter of Virginia, dated February 24, 1854. I presented the advantages of the enterprise to the corporation of Washington, and upon these representations the corporation of Washington subscribed sixty thousand dollars towards the construction of the road. Upon the organization of the company, I became its treasurer, and by me was received from the corporation of Washington the certificates issued by the corporation in favor of the company to that amount. I continued to bear an active and intimate relation towards the company until May, 1861.

Answer to the second interrogatory: The bonds of the company were guaranteed to it by the corporation of Washington, and
239 delivered to me as treasurer of the company by the mayor of the city of Washington, John T. Towers, from time to time, as the wants of the road required. They were not obtained from the corporation in mass, but received at different times and in different amounts, as these wants, arising from time to time, were communicated by me to the mayor. I negotiated with Riggs & Co. that they should advance on those bonds from time to time, when delivered to them within a stipulated margin. Forty-seven thousand bonds was advanced upon by Riggs & Co. I negotiated five thousand of said bonds with J. C. McGuire; eight thousand of said bonds with the Ohio Life Trust Company, of New York.

Almost altogether the entire proceeds realized from these bonds were exclusively appropriated to the purchase of the bed and construction of the railroad known as the Washington and Alexandria railroad, under my personal knowledge and direction. Between twenty-four and twenty-five thousand dollars, derived from
240 the advances upon the bonds in the hands of Riggs & Co., was applied to the purchase of the bed of said road, being a part of the Alexandria and Washington Turnpike Co., to the width of forty or fifty feet, and about five miles, or thereabouts, in length.

I regarded the purchase as highly advantageous and economical to the road. The purchase was effected by myself and Mr. James S. French, the president of said Washington and Alexandria Co., buying the stock of the aforesaid turnpike company, and conveying the said forty or fifty feet to said railroad company. The stock of the turnpike company thus acquired by myself and French was dedicated to the construction of said railroad, and subsequently, during the progress of the work, hypothecated to Messrs. Fowle & Snowden, of Alexandria, to raise means for the prosecution of said road. The moneys thus raised were so appropriated. Four thousand dollars was realized from the bonds in the hands of J. C. McGuire;
241 seven thousand and five hundred from those placed with the Ohio Life Trust Company. The moneys thus received from all of said bonds were paid, to a very large amount, by checks, specially drawn, in favor of parties holding the turnpike stock, and furnishing materials for said road. The residue was applied to the grading, excavation, construction and materials of said road. In no instance did I furnish the proceeds to Mr. French, the president of the road, without receiving from him a specific statement for the purposes to which it was wanted. I have personal knowledge of the payment for materials, lumber, iron, spikes and labor, expended in and about the construction of said road from the direct and immediate proceeds of said bonds. I was repeatedly upon the line of said road during its construction, and was thoroughly acquainted with its minutest operations, and saw almost the entire portion of the
242 money placed in the hands of Mr. French by myself paid out to the laborers and employes of said railroad.

In answer to third interrogatory: I regarded the enterprise as a vast importance to the interests of Washington. The mayor of the city, Mr. Towers. and the leading members of the city council, entertained and expressed the same opinion. There was a strict compliance on the part of the company with all the requirements of the law. Statements were made to the mayor and the committee from time to time showing the progress of the work. At the instance of the mayor, a written statement in detail was furnished him, showing the actual disbursements from the proceeds of the bonds, as also from moneys advanced from the private means of myself and Mr. French. I regarded myself as the custodian of the interests of the corporation, and it was impossible, knowing as I did, the wants of the company, for the president, Mr. French, to have misap-
243 propriated the proceeds from the corporation bonds, in the few instances, an inconsiderable amount, in which I did not have personal actual knowledge of its application. There was kept by the company an account book containing receipts and disbursements. I distinctly recollect of having made a special examination of the affairs of the company when it was necessary to raise money for the work. I was particular in the examination of the accounts, as upon me rested more particularly the truthfulness of the representations of the condition of the company. That account exhibited disbursements and expenditures covering the proceeds from the

corporation bonds, as also advances from our private means and through our private credit to a very considerable amount. I never received or claimed from the railroad company any compensation for my services. I never suggested, nor was it ever suggested to me, that I should receive any compensation for any services in any
244 connection whatsoever with a subscription by the corporation of Washington. I never appropriated to myself a dollar of the moneys passing through my hands, and did not charge the company with my actual travelling expenses, or any other in the furtherance of its enterprise. This account-book, with the papers of the company, were in the possession of the president in Alexandria, in the month of May, 1861, at which time he and myself left for Richmond. I have no personal knowledge where they now are. As a part of my testimony, I refer to the checks drawn upon Riggs & Co., to be found on pages 161, 162 and 163 of the printed record, marked A, the originals of which I have examined at Mr. Riggs' bank. The road was constructed and placed in running order, and equipped with engines and cars. It was continued in operation for a long
245 period of time, and greatly subserved the interests of the travelling public.

(Examination-in-chief closed.)

WALTER LENOX.

Sworn to and subscribed before me this 21st day of June, A. D. 1867.

J. J. JOHNSON,
Examiner.

Met pursuant to adjournment, and adjourned till Monday, 24th inst., at the same place and hour.

J. J. JOHNSON,
Examiner.

Met and adjourned till Tuesday, the 25th inst., when, no one appearing, the com'r adjourned till Wednesday, 26th inst.

J. J. JOHNSON,
Examiner.

246 In the Supreme Court of the District of Columbia.

No. 6.—*Order of reference to auditor.*

THE WASHINGTON & ALEXANDRIA R. ROAD CO.
v.
THE CITY OF WASHINGTON, AND JOS. H. & A. Thos. Bradley, trustees. } 56; equity docket, 7.

This cause having been referred on the 9th January, 1864, by order of this court, to Wm. Redin, esq., auditor, &c., to make an examination and report as stated in said order, and it appearing by the

papers filed herein that the said Wm. Redin, esq., commenced the said examination and took certain testimony therein, but did not complete the same, and the said Wm. Redin having since died, and Walter Cox, esq.. having been appointed the auditor of this court, and since the death of said Wm. Redin the defendants having, upon due notice given to the plaintiffs, proceeded to take further testimony as to the matters of inquiry directed to be made by said auditor before J. J. Johnson, esq., one of the examiners of this court,
247 in the presence of the solicitors of plaintiffs, and the witnesses having been cross-examined by said solicitor, as appears by the return of said examiner filed in this cause:

It is by the court, this 4th day of October, 1867, ordered that the said original order of reference made herein on the 9th day of January, 1864, be, and the same is hereby directed to Walter S. Cox, esq., auditor; and in making his said examination and report, he may admit and consider as evidence the notes and memoranda of proofs made by Wm. Redin, esq., auditor as aforesaid, and also the evidence so as aforesaid taken before examiner Johnson, so far as the facts therein respectively contained are pertinent and admissable; and shall take and receive such further proof as shall be offered by the said parties respectively, so that the said proofs be closed on or before the first Monday in November next: provided a copy of this order be served on the complainants, or their solicitor in this cause, on or before the 10th day of this present month, and that the said auditor make and return his report herein at and during the November term of this court, 1867.

248 By order of the court.
A true copy.
Test: R. J. MEIGS, *Clerk.*

Served copy of the within order on A. G. Riddell. Issued Oct. 4, 1867; returned Oct. 14, 1867.

D. S. GOODING, *Marshal.*

No. 7.

Answer and cross bill.—Filed Sep. 16, 1868.

JAMES P. KILBRETH AND OTHERS, defendants, *ads.* WASHINGTON, ALEXANDRIA R. ROAD CO., and others, complainants. } No. 56. Eq. Doc. No. 7.

James P. Kilbreth, defendent, answering to as much of the above-entitled cause as he is advised, it is necessary and proper for him to answer, answering, says, that he is possessor and owner of twelve bonds or certificates of indebtedness of the Washington and Alexandria Railroad Company, each dated the first day of July, A. D. 1855; eight of them being for the sum of five hundred dol-

249 lars each, and numbered respectively 71, 72, 76, 77, 78, 79, 80 and 81, and four of them being for the sum of one thousand dollars each, and numbered respectively 73, 74, 75 and 82; that the said bonds or certificates of indebtedness are guaranteed by the city of Washington under resolution of the councils of said city, dated the first day of July, A. D. 1855, and that no interest has been paid on either or any of said bonds or certificates of indebtedness since the first day of July, 1863.

This respondent, further answering, says that he became the owner of said certificates by purchase in the open market in New York, without any notice of whence they came or how they were issued, and he further says that he knows nothing beyond what appears on the face of said bonds, about the original issuance or negotiation of the same, but that he is now an innocent holder, without notice.

250 All of which is respectfully submitted.

J. CARTER MARBURY, &
T. W. BARTLEY,
Solicitors for Kilbreth.
JAS. P. KILBRETH.

CITY OF NEW YORK, *State of New York, to wit:*

I, John A. Osborn, a United States commissioner in an for the southern district of New York and State of New York, do hereby certify that James P. Kilbreth personally appeared before me and made oath on the holy evangely of Almighty God that the matters and things stated in the aforegoing and annexed answers are true as there stated.

Given under my hand and seal this 10th day of July, A. D. 1868.

[Commissioner's seal.] JOHN A. OSBORN,
U. S. Commissioner.

251 Supreme Court of the District of Columbia.

Cross petition or bill.

THE WASHINGTON ALEXANDRIA AND Georgetown Railroad Company, of the District of Columbia, and Alexander Hay and others, compl's, *vs.* THE MAYOR AND BOARD OF ALDERmen and Common Council, of the city of Washington, and Joseph H. Bradley and A. Thomas Bradley, trustees, and others, def'ts.	No. 56. Eq. Doc. No. 7.

James P. Kilbreth, one of the respondents in this case, respectfully represents that he is a bondholder and creditor of the Wash-

ington and Alexandria Railroad Company, whose bonds are guaranteed by the city of Washington, as stated in his foregoing answer. The facts fully appear in this case, and respondent avers that as a bondholder and creditor as aforesaid, he is entitled to have said injunction dissolved and the trust property sold for the satis-
252 faction of his and other debts of the bondholders; that there has been great and vexatious delay in the payment of respondent's debt. Wherefore this respondent, by way of cross bill, prays that said injunction be dissolved, and that the trustees be required forthwith to sell said trust property and report to this court the proceeds of such sale for the satisfaction of the claims of this respondent and those of other bondholders, under the order and direction of the court.

And respondent prays for such other, farther and different relief in the premises as equity may require.

JAMES P. KILBRETH,
By MARBURY & BARTLEY,
His Solicitors.

253 No. 8.

In the Supreme Court of the District of Columbia, at the October term thereof; Justice Wylie holding said term.

Order certifying cross-petition of James K. Kilbreth.—Filed October 14, 1868.

THE WASHINGTON, ALEXANDRIA AND Georgetown Railroad Co. *vs.* THE CITY OF WASHINGTON, JOSEPH H. Bradley, A. Thomas Bradley, *et al.*	No 56. Eq. No. 7.

This cause coming on to be heard on the cross-petition of James P. Kilbreth, one of the respondents, it is, this fourteenth day of October, A. D. 1868, order that the said cause be certified to the court in banc for argument.

By the court.

254 In the Supreme Court for the District of Columbia.

Interlocutory decree and order dissolving injunction and ordering sale.—Filed Feb'y 6, 1869.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Company
vs.
THE MAYOR, BOARD OF ALDERMEN AND BOARD of Common Council of the City of Washington, and Joseph H. Bradley and A. Thomas Bradley, trustees, and James P. Kilbreth, and others.
} In equity.

This cause came on to be heard upon the cross-bill and answer of James P. Kilbreth, the original and amended bills of complainant, the answers of the other defendants, exhibits and testimony, and was argued by counsel, on consideration whereof the court do order and decree, that the injunction heretofore allowed in this case be and the same is hereby dissolved.

And the court do further order and direct that the said trus-
255 tees named in the said deed of trust of the date of April 19th, 1855, proceed in accordance with the terms of their said deed of trust to enter upon and take possession of said railroad, together with all matters and things thereto belonging or in anywise appertaining, and to sell the same at public auction upon the terms of their said trust, and that they return to this court a full report of their proceedings therein, together with the proceeds of such sale, subject to the future order of this court.

And all other questions arising in this case are hereby reserved for future consideration and adjudication.

By order of the court.

D. K. CARTTER, *Chief Justice.*

I agree to this decree.

OS. H. BRADLEY, *for self,*
And A. THOMAS BRADLEY, *Trustee.*

"Petition of Joseph B. Stewart, sec'y of W. A. & G. R. R. Co., for suspension of order dissolving injunction until the rights of said company can be defended."
Filed Feb'y 6th, 1869.

(This petition, after hearing, is lost or mislaid, so that it cannot be found.

R. J. MEIGS, *Clerk.*

ington and Alexandria Railroad Company, whose bonds are guaranteed by the city of Washington, as stated in his foregoing answer. The facts fully appear in this case, and respondent avers that as a bondholder and creditor as aforesaid, he is entitled to have said injunction dissolved and the trust property sold for the satis-
252 faction of his and other debts of the bondholders; that there has been great and vexatious delay in the payment of respondent's debt. Wherefore this respondent, by way of cross bill, prays that said injunction be dissolved, and that the trustees be required forthwith to sell said trust property and report to this court the proceeds of such sale for the satisfaction of the claims of this respondent and those of other bondholders, under the order and direction of the court.

And respondent prays for such other, further and different relief in the premises as equity may require.

JAMES P. KILBRETH,
By MARBURY & BARTLEY,
His Solicitors.

253 No. 8.

In the Supreme Court of the District of Columbia, at the October term thereof; Justice Wylie holding said term.

Order certifying cross-petition of James K. Kilbreth.—Filed October 14, 1868.

THE WASHINGTON, ALEXANDRIA AND Georgetown Railroad Co. *vs.* THE CITY OF WASHINGTON, JOSEPH H. Bradley, A. Thomas Bradley, *et al.*	No 56. Eq. No. 7.

This cause coming on to be heard on the cross-petition of James P. Kilbreth, one of the respondents, it is, this fourteenth day of October, A. D. 1868, order that the said cause be certified to the court in banc for argument.

By the court.

254 In the Supreme Court for the District of Columbia.

Interlocutory decree and order dissolving injunction and ordering sale.—Filed Feb'y 6, 1869.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Company
vs.
THE MAYOR, BOARD OF ALDERMEN AND BOARD of Common Council of the City of Washington, and Joseph H. Bradley and A. Thomas Bradley, trustees, and James P. Kilbreth, and others.
} In equity.

This cause came on to be heard upon the cross-bill and answer of James P. Kilbreth, the original and amended bills of complainant, the answers of the other defendants, exhibits and testimony, and was argued by counsel, on consideration whereof the court do order and decree, that the injunction heretofore allowed in this case be and the same is hereby dissolved.

And the court do further order and direct that the said trus-
255 tees named in the said deed of trust of the date of April 19th, 1855, proceed in accordance with the terms of their said deed of trust to enter upon and take possession of said railroad, together with all matters and things thereto belonging or in anywise appertaining, and to sell the same at public auction upon the terms of their said trust, and that they return to this court a full report of their proceedings therein, together with the proceeds of such sale, subject to the future order of this court.

And all other questions arising in this case are hereby reserved for future consideration and adjudication.

By order of the court.

D. K. CARTTER, *Chief Justice.*

I agree to this decree.

OS. H. BRADLEY, *for self,*
And A. THOMAS BRADLEY, *Trustee.*

"Petition of Joseph B. Stewart, sec'y of W. A. & G. R. R. Co., for suspension of order dissolving injunction until the rights of said company can be defended."
Filed Feb'y 6th, 1869.

(This petition, after hearing, is lost or mislaid, so that it cannot be found.

R. J. MEIGS, *Clerk.*

256 Supreme Court of the District of Columbia.

Petition of C. R. Coleman to open decree.—Filed Feb'y 13, 1869.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Company
vs.
THE MAYOR, BOARD OF ALDERMEN AND BOARD of Common Council of the City of Washington *et al.*
} In eq. No.

To the hon. the Supreme Court of the District of Columbia, sitting in general term:

The petition of Charles R. Coleman, respectfully sheweth that since the filing of the amended bill in the above-entitled cause, an injunction was issued by your honorable court in the case of Davison et al. vs. The Washington, Alexandria and Georgetown Railroad Company et al., No. 757 on the equity docket of this honorable court, and in the case of the Washington, Alexandria and Georgetown Railroad Company and others vs. D. Randolph Marten and others, No. 773, on said equity docket, restraining and injoining the directors of
257 the complainant in this cause from intermeddling in any way in the affairs of said company, and appointing J. H. Lathrop a receiver of all the property, rights, &c., of said company, which injunction was duly served on said directors, they being parties in said causes, as will appear by reference to a certified copy of said decree, marked "petitioner's exh. A," herewith filed as part hereof.

Your petitioner further sheweth that the said decree is in full force, and said Lathrop duly qualified as such receiver, and has taken and held possession of all the property and effects of said complainant, being in this district, except its corporate seal, which has never been in his possession for more than two years past, and still holds the same in his custody; your petitioner further sheweth that all the property described in said deed of trust marked E, or so much thereof as has not perished, is now and has been for more than five months past in the custody of receivers appointed by the Circuit Court of Alexandria county, having jurisdiction over said property, and
258 in the custody of receivers appointed by the Circuit Court of the United States for the district of Virginia, as your petitioner will prove.

Your petitioner further sheweth that inasmuch as said receivers were never authorized to appear to or defend this suit in behalf of said company, there has really been no one competent to represent the said complainant since the passing of said decree, and your petitioner is advised and charges that the said cause has been irregularly set down for hearing, inasmuch as no notice thereof was served on said receivers, nor was any process issued on the cross-bill filed in this cause and served on said receiver, or on any of the directors of said complainant.

Your petitioner further sheweth that the complainant in said cross-bill, without proving himself to be a creditor of said company, and

without any notice as aforesaid to said receiver or to said directors, and by no other consent than that of the trustees named in the deed of trust filed with the original bill and marked "exh. E,"
259 hath irregularly and by surprise obtained a decree from your honorable court, sitting in general term, on the sixth day of February inst., by which decree the injunction heretofore granted in this cause is dissolved and the property and road and franchises of said complainant ordered to be sold.

Petitioner acting for his own interest and in behalf of all other stockholders of said complainant who may come in and participate herein, is advised and charges that said decree ought to be reviewed, reheard and set aside as irregular, erroneous and void, as will more fully appear by reference to all the proceedings in this cause and by said "exhibit A," and the proceedings thereunder as hereinbefore stated.

Your petitioner further sheweth that inasmuch as the complainant in said cross-bill is only an incumbrancer on the property, and as the property of said company is now and has been for over two years in the custody and possession of the receiver appointed by your
260 honorable court as aforesaid, it became and was the duty of said incumbrancer to have intervened in said causes, wherein said receiver was appointed, or by petition therein have obtained leave to proceed in this suit to a final decree upon just cause shown to the court.

Your petitioner further sheweth, that if a sale of said road and property shall now be had as decreed, it will cause a great and ruinous sacrifice of the interests of all the stockholders and creditors of said road by reason of the litigation in which said road is involved, and especially by an adversary title set up against the legal existance to said complainant and its title to said road in behalf of the original corporation, whose title the complainant claim to have purchased, and your petitioner tenders himself ready to prove each and every allegation herein made if a reasonable opportunity is offered him to do so.

Your petitioner further sheweth, that said decree is erroneous and should be reviewed and set aside for the reasons hereinafter
261 stated, that is to say: 1st. Your petitioner avers that the said Alexandria and Washington Railroad Company, as first above mentioned, had no right, power or authority, by virtue of their said charter, or the code of Virginia made part thereof, to borrow money on the said 19th day of April, 1855, for the reason that the subscription for the stock of said road had not been paid up and appropriated in the construction of said road as required by the code of Virginia aforesaid. On the contrary, no part of that said subscription had been paid up and appropriated as required by law, of which the corporation failed to take notice, as its duty required it to do.

2nd. Your petitioner charges that the said papers were issued and signed by said Jas. S. French, and were not the proper certificates or obligations of the said Alexandria and Washington Railroad Com-

pany, for the reason they were not authorized by the board of directors, as required by law, and do not upon their face purport to have received the approval of the said board of directors, but were
262 the papers and certificates of James S. French, who could not bind the said company or pledge its faith or franchises by such his individual action and undertaking.

3rd. Your petitioner charges that the said instrument of writing called a deed of trust, executed to Joseph H. Bradley and A. Thomas Bradley, on the 19th day of April, 1855, was not the act and deed of the said Alexandria and Washington Railroad Company, for the reason that the said James S. French, who signed said deed, did so without the authority or approval of the board of directors of said company, who never authorized the same to be signed, nor approved the same after it was signed. And that the corporation thereby acquired no rights whatever in law or in equity against said railroad company or the franchises and property of the same, specified in said deed of trust, which was and is null and void in law and equity as against the said company.

263 4th. Your petitioner charges that the said corporation of Washington had no right, power or authority whatever by virtue of the charter of said corporation, to endorse or bind itself to endorse, or assume, or guarantee the payment in part or in whole of the said certificates or bonds of the said railroad company so issued as aforesaid, for the reason that there is no such express or implied power or authority in the charter of the said corporation; but on the contrary, the 10th section of the charter of the corporation of Washington declares "that the corporation shall not have power to increase the present funded debt of the said city, either by borrowing money or otherwise, unless it shall be agreed to do so by two-thirds of the legal votes of said city at an annual election."

That said charter was enacted by Congress in the year 1848, and was the fundamental law for the government of the said corporation in April, 1855, and it is so at this time. That the said act or
264 ordinance authorizing such endorsement was a violation of such charter, and was and is null and void, and that the act of the then mayor and register, in writing their names on said certificates, created no obligation on the said corporation whereby the same could be legally or equitably bound to pay, or thereby create a valid charge upon the people or revenues of said city; and the said act of endorsement and debt thereby created, never having been authorized or agreed to by two-thirds of the legal voters of said corporation, either before or after the endorsing of the same, no obligation was thereby created, and all moneys paid or appropriated in that behalf, or debt contracted, or money borrowed therefor, was and is unauthorized and void.

5th. Your petitioner charges that the said corporation having no right or authority to make such endorsement, rendered no consideration, and acquired no right whatever at law or in equity
265 under and by virtue of said deed of trust, executed on the 19th day of April, 1855, as aforesaid, and that no rights or equities

thereby were vested in said Joseph H. and A. Thomas Bradley, as trustees aforesaid, to administer or enforce according to said deed, but the same is wholly and absolutely null and void, so far as the said corporation of Washington is named as a cestui que trust.

6th. Your petitioner charges that by the said ordinance of said corporation authorizing said endorsement as aforesaid, it was required that the proceeds of the said $60,000 certificates should be sufficient to complete and equip said railroad; and a committee was appointed composed of the said mayor and two other persons to ascertain that fact before the endorsement of the same; that the said mayor and co-committee wholly failed to obey or observe the requirements of said ordinance or to ascertain the fact, which was notorious, that said certificates or the proceeds of the same would not complete and
266 equip said road; that debts to a much larger amount were then contracted and unpaid, and that it required more than twice that amount in addition thereto to complete said road. whereby the condition never occured when such endorsement could be legally made according to said ordinance, and that the endorsement of said mayor and register was null and void, and created no legal obligation against or in favor of said corporation.

7th. Your petitioner charges that, in fact, there never was any such endorsement made for the use of said railroad company, as by the said ordinance and deed of trust contemplated and specified.

Nor were such certificates ever endorsed or delivered to said railroad company, or the proceeds thereof applied to the completing and equipment of said railroad.

On the contrary, when the said certificates were so signed by said French, and endorsed by the said mayor and register of Washington, $5,000 of the same were paid to James C. Maguire in satis-
267 faction of a pre-existing debt; $8,000 or $10,000 were delivered to Walter Lennox for his services in procuring their endorsement; and the remaining quantity, to wit, $45,000 or $47,000, were, by the said mayor of Washington, hypothecated with Riggs & Co., and money borrowed thereon by him, the said mayor of Washington, who checked for the same, and which was not applied to the said railroad company, but, as respondents are informed and so charge, used, to the amount of $23,000 or $25,000 in purchasing the capital stock of the Washington and Alexandria Turnpike Company, by said French and others, who held it and treated it as their private property; and the said hypothecation of said certificates and perversion of their proceeds by the act of the executive head of the corporation was a violation of and departure from the intents and purposes of said deed of trust, and deprives the corporation of all equities therein, and rendered void and inoperative the said deed of trust, as against the said railroad company.

268 8th. And your petitioner further avers that if the same were issued and guaranteed that they were issued and guaranteed under and in pursuance of an usurious and corrupt agreement, made and executed in the city of Washington and District of Columbia, whereby interest more than at the rate of six per

cent. per annum upon the money loaned or forborne was stipulated to be received by the said mayor, board of aldermen and board of common council of Washington city, contrary to the act of assembly of Maryland, entitled "An Act against excessive usury."—Ch. 69, 1704.

9th. And your petitioner further avers that by the conditions of the said mortgage the said city of Washington, or its corporate authorities, are not entitled to assert their claim in manner and form herein set forth; and that the proceedings in this cause fail to show that the said city of Washington has ever paid any of the certificates so to be guaranteed as aforesaid, or that they ever guaranteed the same.

10th. Your petitioner further show that all the property
269 included in said deed of trust marked "E" lies beyond the jurisdiction of this honorable court, and the said decree assumes to sell property lying in this District and not included in said deed of trust,

Wherefore your petitioner humbly prays that the decree passed by your honorable court may be reviewed, opened and set aside, and that notice of this application be given to all the parties in this case.

R. J. BRENT, *for Petitioner.*
CHARLES R. COLEMAN.

Service acknowledged this ninth Feb., 1869.

J. CARTER MARBURY.
Att'y for Kilbreth.

I, John S. Hanan, commissioner of the United States in and for the district of Maryland, do hereby certify that on the 10th day of February, 1869, Charles R. Coleman, whose name is above subscribed, appeared before me and made oath that he had read the above petition subscribed by him and knew the contents thereof, and that the facts therein stated on his personal knowledge are true, and those stated on information and belief he believes to be true.

[SEAL.] JNO. S. HANAN,
U. S. Commissioner.

270 *Exhibit A to Coleman's petition.—Decree Equity Court app'g receiver for R. R'd —Filed Jan.* 2, 1867.

DAWSON AND OTHERS
vs.
WASHINGTON, ALEXANDRIA & GEORGETOWN R. R. Co. and others. } Equity docket 8. No. 757.

THE WASHINGTON, ALEXANDRIA & GEORGETOWN R. R. Co. and others
vs.
D. RANDOLPH MARTEN & OTHERS. } No. 773. Equity docket 8.

These several causes coming on to be heard on motion made in each of them respectively for an injunction and appointment of re-

ceiver; and by consent of counsel were argued together, on the bills, supplemental bills, answers, and other evidence and exhibits filed therein. And the said several motions having been duly considered by the court, it is hereby, this 2d day of January, 1867, ordered and directed by the court that J. H. Lathrop, esq., of the city of Washington be and is hereby appointed a receiver, with full power and authority to ask for, demand and take possession of the corporate seal of the said company; also of all the books, stock books,
deeds, laws and all other documents and papers of whatever
271 kind or description belonging to said company or any of the
officers thereof as such; also of the railroad bed, the rolling stock, the depots and all other property, whether real or personal, belonging to said railroad company or appurtenant to the said road.

That he thereupon shall proceed to operate said road according to his best discretion, for the benefit of all parties having an interest therein.

That after reserving in hand a sufficient sum to pay the salaries and wages of the persons whom he may find it necessary to employ in operating said road and for meeting other expenses attendant upon the same, he shall make deposit from time to time of the surplus in his hands in some responsible bank or banking-house in the city of Washington, to the credit of these suits; and shall once every month, or oftener if so required by the court, present to the court his account as receiver aforesaid, verified by his own affidavit, and such other vouchers as may be lawfully required. But before entering upon
the discharge of his said functions, the said J. H. Lathrop shall
272 first file his bond in a penalty of fifty thousand dollars, with
securety, to approved by the court or one of the justices thereof, conditioned for the faithful discharge of his duties as such receiver.

And it is further ordered and enjoined that each and all of the above-named defendants do surrender up and deliver to the said J. H. Lathrop, receiver as aforesaid, on demand, all the books, papers, property &c., of the said company, of which the said receiver has been authorized as aforesaid, to take and have the possession; and are further ordered and enjoined not to exercise or attempt to exercise any authority, control, management or direction over the organization or the election of officers for said company, or the property thereof, until the further order of the court.

By order of the court.

In the Supreme Court of the District of Columbia.

273 *Motion by E. C. Carrington, esq., U. S. district attorney, to suspend the execution of decree of Feb'y 6, 1869.—Filed Feb'y 13, 1869.*

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN R. R. Co.
vs.
THE MAYOR, BOARD OF ALDERMEN AND Board of Common Council, of the city of Washington, and Joseph H. Bradley and A. Thomas Bradley, trustees, and James P. Kilbreth, and others.
} In equity. No. 56.

The United States, by attorney for the District of Columbia, E. C. Carrington, comes into court and for the reasons set forth and assigned in a communication from the Secretary of War, dated Feb'y 12, 1869, a copy of which is hereunto annexed, moves the court that the order and decree passed by this honorable court in the above-entitled case on the sixth day of February, A. D. 1869, directing the sale of said railroad, be suspended until the United States have determined under existing provisions of law the
274 amount and sums of money due from the said railroad to the United States, or from the United States to said road by a proper statement of accounts.

E. C. CARRINGTON, *U. S. Att'y.*

Letter from Secretary of War, dated Feb'y 8,'69.—Filed Feb'y 13, 1869.

WAR DEPARTMENT,
Washington, D. C., February 8, 1869.

E. C. Carrington, esq., U. S. Dist. Attorney, Washington, D. C.

SIR: It is observed, in a recent publication in one of the city journals of the proceedings of the Supreme Court of the District of Columbia, that in the case of the Washington, Alexandria and Georgetown Railroad Company vs. The Corporation of the city of Washington, &c., &c., that a decree was issued dissolving an injunction heretofore allowed in the case and ordering and directing
275 the trustees named in a deed of trust, dated April 19th, 1855, to proceed and sell the road in accordance to the terms of their deed, &c.

I deem it proper to bring to your notice the fact that pursuant to a joint resolution, dated February 7th, 1867, the Secretary of War was authorized to adjust and settle the claim of D. Randolph Martin, of the city of New York, on the part of the Washington, Georgetown and Alexandria railroad against the United States, and that an investigation looking to such adjustment and settlement is now in progress.

Should that investigation disclose the fact that the road is indebted

to the United States for materials furnished over and above the value of the freight and passenger traffic over it while it was in the government use during the rebellion, a sale under the deed of trust might result to the prevention of the recovery of the amount of such indebtedness.

The track was wholly relaid, and a portion of the road was newly located and constructed, by the United States, which is not
276 a part of the original line; besides, other work was done and materials furnished.

I would thank you to bring this subject to the notice of the court, to the end that the execution of the decree of sale may be deferred until the result of the investigation shall be made known.

Very respectfully, your obd't servant.

J. M. SCHOFIELD,
Secretary of War.

Letter from Jas. A. Hardie, Maj. Gen., dated Feb'y 13, '69.

WAR DEPARTMENT,
Washington City, Feb'y 13, 1869.

DEAR SIR: The investigation will be taken up next Thursday. I should better have said resumed on that day. It ought not to last over ten days from that time—say a fortnight. Add for contingencies a week if practicable.

Very resp'y, &c.,

JAS. A. HARLIE, *Insp'r Gen'l.*

Nathaniel Wilson, esq., ass't U. S. att'y.

And consideration of said applications is postponed till Saturday next.

277 In the Supreme Court of the District of Columbia, in general term, January, 1869.

Petition of compl'ts for rehearing on cross-bill.—1869, *Feb'y* 20.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Company *vs.* THE MAYOR, BOARD OF ALDERMEN AND Board of Common Council of the city of Washington Joseph H. Bradley, A. Thomas Bradley, James P. Kilbreth and others.	No. 56. Equity docket 7.

The petition of complainants, praying for a rehearing of this case on the cross-bill filed by James P. Kilbreth, one of the defendants, respectfully represents to this honorable court:

1. That the complainants, or their solicitor of record, had no notice of the filing of said cross-bill, by the defendant Kilbreth, and

therefore were not represented by counsel upon the hearing on said cross-bill before this court in general term.

2. That the said defendant Kilbreth has failed to answer
278 and make the discovery called for in the complainants' amended bill filed April 30, 1864, and which discoveries are material to the issue in this cause. That the said cross-bill was filed four years subsequently, to wit, September 16th, 1868; and therefore the complainant cannot be held to answer said cross-bill until said defendant shall have answered and made the discovery as specifically propounded to said defendant Kilbreth in said amended bill.

3. That by an injunction issued by this court, in special term of January, 1867, held by his honor Justice Wylie, the complainants are enjoined from exercising any control over their road and franchises, and that the same has been placed under the direction of this court in the hands of a receiver appointed by his honor Justice Wylie. That said receiver, J. H. Lathrop, esq., has acted from or about the 2nd of January, 1867, and is still acting as such under the direction of this court.

That the reports of said receiver, submitted to this court,
279 show the earnings of the road of the complainants to have amounted, during the years 1867 and 1868, to the gross sum of two hundred twenty-eight thousand two hundred fifty-six dollars and eleven cents ($228,255 11;) and that the expenditures of the road during the same period are claimed by the receiver to have amounted to one hundred seventy-seven thousand six hundred seventy-six dollars and ninety-five cents ($177,676 95;) making the nett earnings of the road fifty thousand five hundred seventy-nine dollars and six cents ($50,579 06,) as will more fully appear from the annexed abstract of monthly receipts and expenditures reported by the receiver, (exhibit A.)

That the complainants are in no way answerable for the management of their road and franchises since the aforesaid injunction of your honorable court, and have no control, and are prohibited from exercising any control, over their assetts, or to exercise any corporate power.

Wherefore your complaints pray, to the end that full justice
280 may be met, that your honors grant a rehearing of said cause and that said defendant Kilbreth be held to answer first and make the discovery sought for by the complainants' amended bill, before the complainants shall be compelled to answer said defendant's cross-bill, and that your honors may grant an order for the payment of fees of the complainant's counsel and necessary expenses in prosecuting this cause on behalf of the complainant. And your orators will always pray, &c.

A. G. RIDDLE,
Solicitor for the Compl's.

Exhibit "A."

Abstract from the monthly reports of J. H. Lathrop, receiver of the W. A. & G. railroad for the years 1867 and 1868.

281	Gross receipts.	Expenditures of the road.
1867.		
January	$10,440 41	$6,111 71
February	2,134 98	3,263 37
March	5,725 27	6,697 40
April	7,664 65	6,668 80
May	7,755 36	6,623 55
June	7,047 93	5,674 07
July	7,569 34	5,924 67
August	8,186 29	4,766 84
September	13,151 28	6,131 20
October	10,324 57	7,532 40
November	8,321 46	7,868 46
December	11,036 47	9,117 80
1868.		
January	14,342 63	8,488 22
February	13,229 93	8,599 82
March	9,928 58	9,245 36
April	9,761 41	10,715 78
May	8,640 43	6,973 35
June	8,515 44	8,384 72
July	9,803 63	7,878 71
August	13,445 39	7,933 77
September	12,340 78	8,187 20
October	10,438 73	9,101 47
November	9,581 63	7,503 34
December	9,069 52	8,284 94
Total for 1867 and '68	$228,256 11	$177,676 95

Nett earnings of the road for 1867 and 1868 ..... $50,579 06

Argument of complt's to rescind decree of Feb'y 6, 1869.—Filed March 6, 1869.

THE WASH. ALEX. & G. R. R'D CO.
vs.
THE MAYOR, BOARD OF ALDERMEN & Board of Common Council of the city of Washington and others. } In equity. No. 56, docket 7.

Motion at bar by the complainants to rescind the decree of
282 Feb'y 6, 1869, directing the trustees to sell the R. R'd, &c., argued by Messrs. Riddle & Brent for the motions, and Messrs. Bradley, sr. and French against them.

Order overruling complainant's motion to set aside decree of Feb'y 6, 1869, and appeal by complainant to S. C. U. S.—Filed March 13, 1869,

W. A. & G. R. R'd Co.
vs.
The Mayor, Board of Aldermen, & B'd of C. Council of the city of Washington, and Joseph Bradley and A. Thomas Bradley, trustees, and James P. Kilbreth and others, deft's.
} In equity. No. 56, docket 7.

The motion of complainants to set aside or rescind the decree of February 6, 1869, directing said trustees to sell the railroad, &c., having been duly considered and fully understood, it is ordered that the same be, and hereby is, overruled.

And from this order the complainants, by its solicitor, Mr. Brent. in open court, prays an appeal to the Supreme Court of the United States.

283 In gen. term, March 20, 1869.

Motion of compl'ts for appeal from decree of Feb'y 6th and of March 13, '69.—Filed March 20th, 1869.

W. A. & G. R. R. Co.
vs.
The Mayor, &c.
} No. 56.

On this day appeared A. G. Riddle, sol. for the pl'ff, in open court, and prayed for an appeal from the decree dissolving the injunction in this case, and ordering a sale of the property made Feb'y 6, 1869, as well as the order of the court on the 13th inst., overruling the petition and motion of the plaintiff to vacate and set aside said decree of Feb'y 6th, and the other motions for said purpose.

A. G. RIDDLE,
Sol. for Plff.

Petition of James S. French vs. Sale of Road.—Filed March 22, 1869.

To the honorable judges of the Supreme Court of the United States for the District of Columbia:

284 Your petitioner, James S. French, who owns three-fourths of the stock of the Alexandria and Washington Railroad Company, and who is also president of said company, but has been enjoined by Samuel M. Shoemaker, agent of Adams Express Company, in the United States Circuit Court for the District of Virginia, from acting as president of said company, or doing anything to assert and protect its interests, which injunction is still pending, respectfully shows unto your honors that his interests, as well as the interests of all the creditors of the road, with the single exception

of the city of Washington, will be entirely swept away and destroyed should the decree lately entered up by your honors, directing a sale of the Alexandria and Washington railroad, be enforced.

Your petitioner avers that there is due the Alexandria and Washington R. R. Company by the parties who have had possession, and by those who now have possession of said road, a much larger sum than the amount guaranteed by the city of Washington, for the settlement of which a decree has been obtained and an account ordered. And, if permitted time to free their road from the
285 litigation in which it is involved, every creditor of the road will be paid without rendering a sale of the road necessary.

He therefore prays a recission of your order directing a sale of the road, for the following additional reasons:

1st. Because the road is not in the possession of the Alexandria & Washington Railroad Company, nor in the possession of the trustees in the deed under which the sale is directed to be made, consequently under a sale so made no possession could be delivered. The road is now in the actual possession of Oscar A. Stevens & W. Jackson Phelps, receivers, appointed in the United States District Court for Virginia, by Judge Jno. C. Underwood, sitting in chambers, at the instance of Samuel M. Shoemaker, for Adams' Express Company, and your decree ordering a sale, if it be effectual to give the purchaser possession under it, would be to dispossess the receivers of a court of competent and co-equal jurisdiction of property in their possession in a suit to which they are not parties.

Under such circumstances possession of the road would not
286 be delivered up unless the receivers, Stevens & Phelps, or Shoemaker, whose agents they are, become the purchasers, which they could do at their own price; for a sale to other parties must carry with it accompanying law suits, which would greatly lessen the price at which it could be sold.

The Washington, Alexandria & Georgetown R. R. Co. and the Alexandria & Washington R. R. Co., who are the adverse claimants of the road, have both instituted proceedings to dispossess the said Shoemaker, and the said Stevens & Phelps, receivers as aforesaid of the road, which proceedings are still pending in the United States District Court for Virginia.

2d. Because there are clouds resting upon the title of the Alexandria and Washington railroad, which should be removed before a sale is permitted to take place.

There is now pending in Alexandria county, Virginia, a suit brought by the A. & W. R. R. Co. vs. The W., A. & G. R. R. Co. and others, for the recovery of that portion of their road lying within Virginia. In this suit the mayor, board of aldermen and board of common
287 council of the city of Washington, are co-plaintiffs with the complainants, who, after some three years of expensive litigation have obtained a final decree reclaiming the sale of the Alexandria & Washington railroad null and void, as well also as the organization of the W., A. & G. R. R. Co., and all their subsequent proceedings, ordering the road to be restored to the A. & W. R. R.

Co., and an account to be taken before a commissioner of the court to ascertain the earnings and expenses of the road since the sale, &c., &c., a copy of which decree is herewith filed as a part of this petition.

A proviso in this decree requires, before the Alexandria & Washington R. R. Co. shall be placed in possession of their road, they shall execute a bond in the sum of $50,000, with approved sureties, faithfully to account for the receipts and expenditures of the said road; that bond has been given.

From this decree an appeal was taken to the District Court of Appeals, where the decree was affirmed; and from the District Court of Appeals the case has been carried by supersedias to the Supreme Court of Appeals, where it is now docketed and will be tried as soon as it can be reached.

3rd. Because it has not yet been decided what is the extent
288 of the Alexandria & Washington railroad, but it is still a subject of litigation.

Does it extend from the depot of the Orange road, in Alexandria, to the depot of the Baltimore and Ohio R. R. in Washington city? Your petitioner claims that it does, and feel confident he will be able to establish the title of the Alexandria & Washington Railroad Company to this extent of road, whenever he shall be permitted to assert the rights of said company in the courts of his country. He is now debarred from doing this by two injunctions sued out of the United States District Court for Virginia, and although as president of the Alexandria & Washington railroad he brought a suit for its recovery in the early part of the year 1866, he was enjoined in February, 1867, from asserting any interest in said road, or taking any steps to prosecute said suit, and although the case is now pending in the Supreme Court of Appeals of Virginia, he has never been permitted to take testimony to disprove the averments of the answers, but the case rests on the bill and exhibits filed.

4th. Because the Alexandria & Washington R. R. Co.,
289 though so largely interested in the subject-matter involving certainly not less than $500,000, were not made parties to the suit in which a decree has been rendered ordering a sale of their property under circumstances which render it impossible that it can be sold for anything like its value; proceedings of which your petitioner had never heard, and could never have supposed that the corporate authorities of Washington city, co-plaintiffs with the A. & W. R. R. Co., in seeking to establish their title to the road after said title had been recognized and affirmed by two judicial tribunals and the case was now pending in the court of last resort, and must be decided in some short time, could have permitted a sale of the road to be made under circumstances which would prevent its selling for enough to pay even the debt due the city of Washington, utterly regardless of the rights of all other creditors.

5th. But besides all these reasons, your petitioner avers, that if any faith can be reposed in the sworn testimony of the parties who illegally seized upon and got possession of the Alexandria & Wash-

ington railroad, as well as of other parties not connected with its illegal seisure, then every dollar due by said company to the
290 city of Washington for guaranteeing its bonds has been paid; that every dollar of the debt, to pay which your honors have decreed a sale of the A. & W. R. R. Co. has been paid; and if the sale be permitted really to take place, it is simply ordering a man's property to be sold who is not a party to any suit before you, and after paying commissions and all expenses of sale, return the proceeds of the sale to the court to be held subject to its future order. In the suit brought by the Alexandria & Washington R. R. Co., in the Circuit State Court for Alexandria county vs. The W., A. & G. R. R. Co. and others, various answers, duly sworn to, are filed. Among these answers are four which assert that the debt due the city of Washington for guaranteeing the certificates of the A. & W. R. R. Co. to the amount of $60,000, has been paid or provided for; this being so, the trust deed has been satisfied, and under it the road cannot be sold. Joseph B. Stewart states in his answer (p. 127) that there is not a debt of the A. & R. R. Co., of any species, that the W., A. & G. R. R. Co. "has not paid or provided for, even including the enormous debt to the corporation of Washington of near $80,000."

291 R. W. Latham, president of the W., A. & G. R. R. Co., swears that "in September, 1865, his company entered into a contract with and purchased from the corporation of Washington the whole of said lien, giving a guarantee for a sum of about $70,000, which they are now paying," (p. 161;) and in another part of his answer, (p. 171,) he reaffirms his statement that the debt to the city of Washington had been provided for. Alexander Hay, in his answer, (p. 93,) says: "And this defendant is informed that since his retirement from all connection with said road, the present company (W., A. & G. R. R. Co.) has provided for the payment of the said $60,000 debt, with interest, amounting to some $80,000 in all, to the corporation of Washington; and defendant doubts very much if there is a single debt of the old company that has not been paid by this defendant or said new company since its organization." Robert Mickle, cashier of the National Union Bank of Maryland, Charles R. Coleman, Horace R. Riddle, Allan Chapman, and William F. Snow, cashier of the National Exchange Bank of Baltimore, all aver and charge that the debt due the city of Washington, amounting,
292 with other small debts mentioned, to some $90,000, secured as aforesaid, were provided for or paid by the W., A. & G. R. R., (p. 889.)

In a bill filed by H. R. Riddle and others vs. James S. French, in the District Court of the United States for Virginia, praying an injunction against him and the allegations of the bill sworn to in this statement, (p. 7,) that the W. A. & G. R. R. Co., "in September, 1865, entered into a contract with, and purchased from the corporation of Washington, the whole of said lien, giving a guarantee for a sum of about $70,000, which they are now paying; every debt, so far as known, has been paid or provided for by this company; and

had not this company succeeded to the possession of the franchises of said road, and applied sufficient capital to build a complete road as aforesaid, none of its creditors ever would have received the first dollar."

In view, therefore, of these sworn statements, which your honors, without investigation, will certainly not discredit, your petitioner prays that the order directing a sale of the road may be set aside,
293 and the deed to secure the debt due the city of Washington be cancelled, on the ground that the debt provided for in said deed has been paid, as set forth in the sworn answers and bill referred to. Or, if your honors should entertain any doubt as to the truth of the facts sworn to in said answers and bill, that you would cause the said Jos. B. Stewart, Alexander Hay, R. W. Latham, president of the W. A. & G. R. R. Co., Robert Mickle, cashier of the National Union Bank of Maryland, Charles R. Coleman, Horace R. Riddle, Allan Chapman, and William F. Snow, cashier of the National Exchange Bank of Baltimore, and H. R. Riddle and the parties associated with him in the injunction bill referred to, to appear before your honors and bring with them the necessary vouchers to establish the settlement of the debt due the city of Washington as set forth by them in the various records referred to, that in the meantime your honors will rescind the order directing a sale of the Alexandria and Washington Railroad, and make no orders affecting the interests of said company until they shall be permitted to appear in your court and defend their interests.

JAMES S. FRENCH,
A stockholder in the A. & W. R. R. Co.

294 In view of the facts set forth in the foregoing petition, and in the argument submitted to your honors, your petitioner prays that J. H. Lathrop, your receiver, appointed in the case of Jos. Davison and others vs. Stevens & Phelps and others, be directed to pay over to your petitioner, out of any moneys that may be in, or may come into his hands as receiver of the Washington, Alexandria and Georgetown R. R. Company, the sum of three thousand dollars.

JAMES S. FRENCH.

Decree. August term, 1868.

This cause coming on this day to be heard upon the papers formerly read on the amended bill, answers and exhibits, and upon the application of C. R. Coleman and others for a removal of this cause to the Circuit Court of the United States for the District of Virginia, the motion of the same parties to strike out the setting of this cause for hearing by the clerk, and that the case be set down for hearing on demurrer, and the exceptions of the said Charles R. Coleman and
295 others to the commissioners' report returned in this cause, and argument of council, being heard: on consideration whereof, the court overrules the said several motions of the said Cole-

man and others, and the court proceeding to make such decree herein as it is advised is right and proper, doth adjudge, order and decree, that the order of the County Court of Alexandria made on the 3d day of February, 1862, removing Walter Lenox, trustee under the deed of 16th of July, 1857, and substituting Joseph B. Stewart in his stead was without authority of law; the same is hereby declared null and void and set aside, and that all the proceedings of said Joseph B. Stewart as substituted trustee, subsequent thereto, his sale and conveyance of the said road to Alexander Hay and Joseph Thornton, on the 14th April, 1862, and the organization thereunder of the company styled the Washington, Alexandria & Georgetown Railroad Company, were illegal, and are hereby annulled and set aside. But it appearing to the court that by virtue of said sale and conveyance, a new company, styled the Washington, Alexandria & Georgetown Railroad Company was organized, which took possession of the said road, has equipped and operated the same, and has
296 issued large amounts of stock by virtue of an act of the general assembly, passed January 23d, 1864, authorizing an increase of its capital stock to an amount not exceeding, in the aggregate, five hundred thousand dollars, and to issue and sell its bonds to an additional amount of two hundred thousand dollars; and it further appearing that the said company has created debts and incumbrances upon the same, and further that, under the authority aforesaid to issue stocks and bonds to a limited amount, a large amount has been issued in excess of said authority, which have been sold and are now in the hands of the purchasers thereof, and with a view to ascertain what equities may exist, growing out of said transactions, the court doth further order, adjudge and decree that one of the commissioners of this court do inquire into, ascertain and report—

1st. What was the amount of the liabilities of the Alexandria and Washington Railroad Company, on the day of the sale made by Joseph B. Stewart, viz., 10th April, 1862, to whom due, with the priorities?

2d. What was the condition of the road at the date of the sale, as regards its capacity for transportation, and in whose use was
297 the road at the time, and when the parties then in possession transferred the same, and to whom?

3d. What amount of liabilities has been contracted by the Washington, Alexandria and Georgetown Railroad Company since the 10th day of April, 1862, to whom due, by whom, under what authority, and from what source were the funds necessary derived.

4th. What amount of stock of the said new company was issued, by whom, and by what authority, what amount was paid for, and by whom, and by whom received.

5th. How much of said stock thus issued was genuine stock issued by the company under its authority, and how much was spurious, and by whom, and under what circumstances the same was issued.

6th. What amounts have been expended in the reconstruction and

equipment of said road since 10th of April, 1862, to whom paid, and from what source the funds were derived.

7th. What real estate in Virginia has been purchased since that date, how much remains due thereupon, and to whom.

8th. What amount was received from the United States government for the transportation of troops, and how expended, and what amount are now due for that service.

298 9th. That he takes an account of the earnings of the said road since the 10th of April, 1862, and any amounts received by the new company for earnings prior thereto, and what amount of improvements since that date have been placed upon it, and by whom, and how paid for, and what amount of property belonging to the Washington and Alexandria Railroad Company was received by the said new company, and have disposed of, or by the defendant or any of them.

10th. That the exceptions taken to the former report by Coleman, &c, as well as the report itself, be recommitted; that the commissioner be required to take any further testimony that may be submitted by any of the parties to the cause, and that he proceed to take the accounts and make the enquiries required under the former decree, except so far as they may be comprised in this order, and that in executing this decree, he will state any matter which he may deem pertinent, or that any of the parties may require; and to carry this order into effect, that he may propound such interrogatories to either of the parties to this cause, that he may deem material, and that of the taking of this account he give notice according to law by publication, which shall be deemed equivalent to personal service.

299 And the court doth further order, adjudge, and decree, that inasmuch as the Washington, Alexandria and Georgetown Railroad Company have acquired no legal title to the said road, under the proceedings of the County Court of Alexandria, or the acts of the said substituted trustee, that the said road now in possession of the officers, agents, lessees or servants of the said Washington, Alexandria and Georgtown Railroad Company be restored to the possession of the Alexandria and Washington Railroad Company, its duly constituted officers and agents.

But it appearing to the court, from the proofs filed in this cause, that the said Alexandria and Washington Railroad Company is largely indebted, and has created incumbrances upon the said road by deeds of trust in favor of the city of Washington, Fowle, Snowden & Co., and Benjamin Thornton, and that there are other liens existing thereupon prior to the organization of the new company, and that the said company be upon a further and final hearing of this cause held to a certain extent responsible for the debts and liabilities incurred

300 by the new company, upon which the court expresses no opinion, doth further order, adjudge and decree, that before so much of this decree as requires the restoration of the road to the Alexandria and Washington Railroad Company shall take effect, the said company, or some one of them, shall enter into bond with sufficient security to be approved of by the clerk of this court or the

judge thereof, in the penalty of $50,000, faithfully to account for the receipts and expenditures of the said road. And it is further required and directed that said company shall report its proceedings with a full account of its receipts and expenditures, with the cash on hand, to the first day of each term of this court, subject to its order.

And at the instance of the defendants, who desire to present an appeal, the execution of this order is suspended until 15th of November next, upon such person or persons giving bond before the clerk of this court in the penalty of five thousand dollars, conditioned according to law.

Endorsement: This paper was handed to me by Mr. French
301 on Saturday the 13th of March, at the close of his argument before the court, in which he sought to convince the court that no decree should be made for the sale of the railroad by the Messrs. Bradley under their deed of trust.

ANDREW WYLIE.

March 22d, 1869.

In the Supreme Court of the District of Columbia, the 23rd day of March, 1869.

Appeal bond.—Filed March 23, 1869.

THE WASHINGTON, ALEXANDRIA AND Georgetown Railroad Company, and Alexander Hay, Complainants, *vs.* THE MAYOR, BOARD OF ALDERMEN AND Board of Common Council of the city of Washington, and Joseph H. Bradley and A. Thomas Bradley, Trustees, and James P. Kilbreth, *et al.* defendants.	No. 56.	On appeal.

Know all men by these presents that we John Hopkins, Allen A. Chapman, Thomas C. Jenkins, and the president and directors of the National Exchange Bank of Baltimore, are bound unto the mayor, board of aldermen, and board of common council of the city
302 of Washington, and Joseph H. Bradley and A. Thomas Bradley, trustees, and James P. Kilbreth, George W. Riggs, A. T. Keickover, and James C. McGuire, in the sum of one hundred and twenty thousand dollars to be paid to the said mayor, board of aldermen and board of common council of the city of Washington, and Joseph H. Bradley and A. Thomas Bradley, trustees, and James P. Kilbreth, George W. Riggs, A. T. Keickover and James C. Maguire, their executors and administrators: To which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents; sealed with our seals and dated this 22nd day of March, 1869.

Whereas the above-named Washington, Alexandria and George-

town Railroad Company and Alexander Hay, complainants herein, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered on the sixth day February, 1869, in the above suit by the said Supreme Court of the District of Columbia.

303 Now therefore the condition of this obligation is, that if the above-named Washington, Alexandria and Georgetown Railroad Company, and Alexander Hay shall prosecute their said appeal to effect, and answer all damages and costs, if they shall fail to make good their said appeal, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] JOHN HOPKINS.
[SEAL.] ALLEN A. CHAPMAN.
[SEAL] THOS. C. JENKINS.

Sealed and delivered in presence of Robert Brent, as to all parties.

By authority of the board of directors of the National Exchange Bank of Baltimore, I hereto subscribe my name as president and affix the corporate seal of said bank hereto.

JNO. HURST,
President, National Exchange Bank of Balto.

Independent of the responsibility of the National Exchange Bank of Baltimore I consider the above bond as ample and sufficient securety for a million dollars.

22 March, 1869.

WILLIAM F. GILES,
U. S. District Judge for Maryland.

Approved as to the penalty and sufficiency of the sureties in the within bond.

March 23rd, 1869.

A. B. OLIN, *J.*

Supreme Court of the District of Columbia.

304 *Petition of J. B. Stewart and affidavit to supplement petition filed on the 6th day of Febroary, 1869, and lost or mislaid. Filed March 29, 1869.*

THE WASHINGTON, ALEXANDRIA AND Georgetown Railroad Company, *vs.* THE MAYOR, BOARD OF ALDERMAN and Board of Common Council of the city of Washington and others. } 56. Eq. doc. 7.

Joseph B Stewart, being sworn, states that he is a stockholder, a director and secretary of the Washington, Alexandria and George-

town Railroad Company, and has been since the organization of the same; that he also prepared the pleadings and has acted as the attorney of said company in the above-entitled cause.

That he prepared the amended bill in the above cause as ordered by the court, wherein James P. Kilbreath was made a party as will more fully appear from the record in said proceedings.

That on or about the 6th day of Feb'y, 1869, this affiant
305 was for the first time advised of the existence of certain proceedings in the above-entitled cause on the part of J. P. Kilbreath, wherein a certain order was on or about that day made, directing the sale of the road of said company, and other proceedings therein mentioned.

That this affiant thereupon and instantly, and before the adjournment of the said court in which order was made, and on the day it was made, prepared a petition addressed to said court, praying a stay of all proceedings until said company could be properly heard upon the matter of the pretended answer and cross-bill exhibited on the part of said Kilbreath.

That the petition so filed alleged and stated, among other things, that the said Kilbreath had no such rights or equities as a certificate holder or creditor of said company as to entitle him to the relief about being extended to him by said order.

That the matter of said certificate was so far affected by other proceedings had and pending in said court as to render it inequi-
306 table, illegal and improper that said order should go into effect, and alleged many reasons for why said order should be suspended, which said petition this affiant filed in this honorable court on or about the said 6th day of February, 1869, as aforesaid, and was then at all times since, ready and prepared to make the same good if permitted by this honorable court.

That affiant is informed that said petition so filed by him cannot now be found on the files of this court and is lost or mislaid. Wherefore affiant makes this statement to supplement the absence of said petition, and asks that the same may be received in the record in the place of the same.

And that said petition may be considered and treated as on file from the said 6th day of February, 1869, in all further proceedings in this cause.

(Signed) J. B. STEWART,
Secretary &c., of the Washington, Alexandria and Georgetown Railroad Company.

Subscribed and sworn to before me March 29, 1869.
R. J. MEIGS, *C'lk.*

IN THE

Supreme Court of the United States.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN RAILROAD COMPANY, AND ALEXANDER HAY

vs.

CITY OF WASHINGTON, BRADLEY AND OTHERS.

Appeal from Decree of the Supreme Court of the District of Columbia.

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vs.

CITY OF WASHINGTON, BRADLEY AND OTHERS.

Appeal from Decree of the Supreme Court of the District of Columbia.

On the 1st September, 1863, the Appellants filed their bill herein, praying an injunction against the Bradleys, Trustees, forbidding them to sell the property and franchises of the Railroad Company under the powers contained in a certain mortgage made to them, and intended to secure the City of Washington, for its endorsement of certain railroad bonds. The equities set forth in the bill by the Complainants, Alexander Hay and the Railroad Company were, in part different, and in part identical, and both would alike be prejudiced by the sale sought to be prevented.

Alexander Hay's Claim.

Hay, in addition to being President of the Washington, Alexandria and Georgetown Railroad Company, sued in his individual capacity.

1. The Complainants alleged (p. 2,) that in February, 1854, the State of Virginia incorporated a company called the *Alexandria and Washington* Railroad Company.

See Act of Incorporation, p. 19.

Mem. It is to be noted that the name of the Corporation appellant is the *Washington, Alexandria and Georgetown Railroad Company*, while the corporation referred to is called the *Alexandria and Washington Railroad Company;* and as these two corporations will necessarily be much referred to, it is well to bear in mind that the corporation appellant is the *new corporation*, and the other is the *old corporation*.

2. That the Alexandria and Washington Railroad Company, the *old corporation*, in April, 1855, purported to execute to the Bradleys, as Trustees, a mortgage upon its whole present and future property and franchises, to indemnify the City of Washington against its indorsement of $60,000, bonds of the railroad company.

3. That he, the said Hay, became the owner of over $80,000 of judgments and decrees against said old corporation.

Page 7 of Record, pars. 21, 27.

4. That a sale under the pretended mortgage to the Bradleys, which is prior in date to his claims, would be prejudicial to hm and the other appellant.

5. The said Bradley mortgage is not a valid and subsisting lien against the property, &c., of the old corporation, for many reasons to be hereafter stated.

6. That the said Bradleys, Trustees, have given notice that they would, on the 16th September, instant, sell the said road franchises, &c., at public auction.

He therefore joins in the prayer of the bill, that the said sale may be restrained.

Briefly. Alexander Hays represents himself to be a creditor of the old railroad corporation, by judgments and decrees junior to the date of the Bradley mortgage; and he brings this suit to have this mortgage declared invalid and void.

The Claim of the Corporation Appellant, the Washington, Alexandria and Georgetown Corporation.

This corporation, which will hereafter generally be designated as the new corporation, claims to have been incorporated by and

under the laws of Virginia and the Congress of the United States.

Concurrent legislation of two sovereignties cannot make the corporations created by them a single corporation, but the legal entity, created by each respectively, only exists within the limits of the sovereign creating it, and is separate and distinct from the other.

Farmer *vs.* Blackstone Co., 1 Sumner, 47–62.
Ohio and Miss. Co. *vs.* Wheeler, 1 Black, 297.

Hence, under the name of the corporation appellant there is represented two distinct entities, one a citizen and creature of the State of Virginia, owning property within its limits, and the other a federal corporation created by act of Congress, and owning property within the District of Columbia.

This distinction is important in the future consideration of this case, as the property involved in this litigation is a line of railroad extending from Alexandria to the Potomac river, opposite to Washington, in the State of Virginia; thence crossing the Potomac river and entering into the District of Columbia, as far as the Baltimore and Ohio Railroad Depot.

The Virginia New Corporation.

The Corporation Appellant claims to be a Virginia Corporation and to own that part of its line of road which lies in that State under the following circumstances:

1. In April, 1854, Virginia incorporated the Alexandria and Washington Railroad Company, which we designated as the Old Corporation. Its charter is found at page 19, and by examining it, it will be seen that it was only empowered to extend "from the City of Alexandria, in the State of Virginia, to the City of Washington, in the District of Columbia, crossing the Potomac at some eligible point between the two cities."

Mr. French, the President of this road, in April, 1855, executed the hereinbefore referred to mortgage to the Messrs. Bradley; the validity, extent and construction of which is involved in this litigation.

Subsequent to this mortgage, the State of Virginia, by act passed in February, 1856, authorized the same Corporation to issue $100,000 of coupon bonds, see page 25. Under this act the

Old Corporation issued $30,000 of coupon bonds to a Mr. Thornton, and on the 16th July, 1857, executed a mortgage to Walter Lenox, its Secretary and Treasurer, to secure the repayment of the principal and interest of said bonds, page 25. Default being made in the payment of the coupons of these bonds, under its conditions the bondholders were entitled to have the road sold; and, in 1862, when the bondholders moved in this matter, neither Lenox, the Trustee, or French, the President, or any Director of said road, could be found, all of them having gone within the Confederate military lines. A clause in the mortgage authorized a substitution to be made in case of death, incapacity or resignation of Trustee by any Court of Record in Alexandria County (p. 27) upon certain notices; and, in addition, the County Court of that county was a Court of original and general equity jurisdiction.

Under these circumstances, on the 3d February, 1862, Davison, agent of the bondholders, presented a petition to the County Court praying for a substitution of a Trustee in place of Lenox, representing therein that after diligent inquiry he could find no officer of, or person interested in, the railroad, upon whom notice of his application could be served. Thereupon the Court declared the incapacity of Lenox and substituted J. B. Steuart in his place, pp. 31, 32, 33.

Steuart accepted his trust, and upon receiving the demand of the bondholders that he should sell, in pursuance of the conditions of the mortgage, proceeded to publish a notice of sale for sixty days in the newspapers in Alexandria, Washington and New York, and, on the 10th April, 1862, sold the said road, its franchises and property, to Alexander Hay, Co-Appellant herein, for $12,500, pp. 41, 42.

Under the Code of Virginia, when the sale of a railroad is made and an order thereof executed, the purchaser has the power to erect himself into a Corporation by any name he may select.

See Extracts of Code, p. 42.

Code of Va p 357 ¶ 329

Under the powers conferred on him under this law, Hay associated others with him, and erected himself into a Corporation, entitled the Washington, Alexandria and Georgetown Railroad Company, and Steuart, the Trustee, executed to the new Corporation all the property and franchises of the old Corporation,

Pp. 43 *et seq.*

All the proceedings of Steuart were reported to the Alexandria Court, p. 41, but no action seems to have been had on his report.

Hence it appears, that the claim of the Virginia New Corporation depends upon the sale of Steuart, substituted Trustee, and upon other acts of the Legislature of Virginia recognizing and declaring its existence as a lawful Corporation, and especially on "the Act to authorize the Washington, Alexandria and Georgetown Railroad Company to increase its capital stock," passed 23d January, 1864.

The Federal Corporation.

The claim of the Corporation Appellant to be a Federal Corporation arises from the legislation of Congress.

The Old Corporation created by the State of Virginia had no power or franchise within the District of Columbia, nor could it migrate, as the only powers conferred on it were those necessary to build and operate a railroad in the State of Virginia.

After the sale by Steuart, Trustee, Hay and his associates, desiring to cross the Potomac by a bridge and connect with the northern railroad system through the Baltimore and Ohio Railroad Company, applied to Congress for power to effect this object.

After a struggle Congress passed the Act of March 3, 1863, found at p. 90.

This created a Federal Corporation, and conferred on it corporate powers.

The names of these different Corporations embrace so many localities that it is difficult even for those well acquainted with them to repeat them without transposition or omission ; and, by an inadvertence, the name used in this Act of Congress was the Alexandria and Washington Railroad Company, which is the name of the Old Corporation.

But the bill charges that this act conferred power on the Corporation Appellant, and under it, it proceeded to build the bridge, and, in Sept., 1864, when the bill was filed, it had already expended large sums on the bridge, and was under contract to spend other sums ; and that it had purchased real estate, &c.

No party appears to dispute the claim of the Corporation Appellant to be the entity intended by the Act of Congress of March,

1863; and, in fact, in 1866, Congress corrected the misnomer by an Act declaring that the New Corporation was intended by the Act of March 3, 1863.

See 14 U. S. Stat.

The bill of complaint then may be regarded as a bill filed by three Complainants, to wit: 1st. By Alexander Hay, individually. 2d. By the Virginia New Corporation. 3d. By the Federal Corporation.

Alleged Invalidity of the Bradley Mortgage.

The bill attacks the validity of the Bradley mortgage.

1st. Because the Old Corporation, the Alexandria and Washington Railroad Company, had no authority to borrow money at the time of the execution of the Bradley mortgage.

2d. Because the mortgage in favor of the Messrs. Bradley was not the act or deed of the Corporation, but simply that of its President.

3d. Because the certificates of indebtedness intended to be secured were not signed by authority of the Corporation.

4th. Because the guarantee and endorsement of the City of Washington was not binding, as it exceeded its corporate authority to bind itself.

5th. That the proceeds of said certificates were not applied beyond a very small amount to the building or equipment of the road.

These grounds of objection are common to Alexander Hay and to the Virginia Corporation; but, in addition to these objections, Alexander Hay and the Federal Corporation Appellant present the further objections which are patent on the record and pleading;

6th. That, conceding said mortgage to be valid, still the Trustees cannot proceed to sell in such terms as would cloud the title of the bridge and other property ~~outside~~ the District of Columbia.

On the bill after hearing, an injunction was issued (p. 102,) restraining the sale.

Defendants' Answers.

On 14th Dec., 1863, the Messrs. Bradley, Trustees, filed their answer, claiming to have no interest except as Trustees.

The City of Washington also answered, p. 104. The answer says that it does not admit that the Corporation Complainant *is a Virginia Corporation; but it does not deny the allegation that it was a Corporation under the Act of Congress.*

The Answer further transverses most of the averments of the bill; but admits (p. 110,) *that Hay did purchase the judgments and other claims against the Old Corporation;* but avers that he so purchased with full knowledge of the existence of the Bradley mortgage. They further aver that the proceedings and sale of J. B. Steuart, substituted Trustee, were invalid, and that thereby the Old Corporation did not cease to exist.

Amended Bill and Proceedings.

April 30, 1870, an amended bill, under order of the Court, was filed.

The amended bill (p. 114,) is in the name of the Washington, Alexandria and Georgetown Railroad Company, *a Corporation created by Virginia and by Congress*, and Alexander Hay, a citizen of Pennsylvania, and is brought against the original Defendants, and Riggs & Co., James C. Maguire, P. D. Lengham and James T. Kilbreth. The amended bill repeats substantially the averments of the original bill, but, in addition thereto, it avers that the Bradley mortgage was invalid for the reasons set forth in the original bill, and for the further reason that there never had been any election for Directors of said Old Corporation, but that French and Lenox assumed without authority to act as President and Treasurer; and hence no Directors ever did or could authorize the execution of the mortgage.

In addition the amended bill, p. 120, charged that the city ordinance provided that the proceeds of the bonds should be expended under the direction of a committee, exclusively "*for the making of the road;*" that this condition was violated with

the consent and knowledge of the City of Washington; that $24,000 was applied *to the purchase of the stock of the Washington and Alexandria Turnpike Company, as the personal property of James S. French and Walter Lenox;* and that there were other misappropriations; that some of the certificates were sold for fifty cents on the dollar, and that $37,000 of the $60,000 was misapplied, and never went into the making of the road; *that* $47,000 *of these certificates were deposited by the City of Washington with Riggs & Co., as collateral, and money from time to time drawn out on the checks of the Mayor and Lenox; and that Riggs & Co. still hold a large amount of these certificates;* and that all these misappropriations were connived at by the city authorities.

The bill, p. 122, further sets up the act of the Legislature of Virginia, recognizing the corporate existence of the Virginia corporation, which act is found at p. — Virginia Act, 1864.

In addition to the allegations of the original bill, this amended bill further charges that these certificates were not sealed with *the corporate seal, &c.*

The amended bill then proceeds to ask discovery from the certificate holders.

The amended bill further charges, that the complainants *have tendered to pay a larger sum* than was ever applied to their road, prays for process against all defendants, and for relief, &c.

Subpœna was issued and served on the City of Washington, and other defendants, May 5, 1864. P. 127.

The City of Washington never has answered the amended bill, though served with subpœna.

Riggs & Co.

October 3d, 1864. *Riggs & Co., though summoned, having filed no answer, it was ordered,* p. 139, *that the bill be taken pro confesso against them.*

This defendants, Riggs & Co., alleged to hold $47,000 *of these bonds, have never answered as yet, and the default still stands against them.*

James T. Maguire

Filed his answer December 13, 1864, which is found at p. 140. He claims to hold $5,000 worth of bonds, which he says he obtained from Walter Lenox for advances amounting to $4,185,

made to Lenox on his representations that the money was to be used for the purchase of iron for the road, &c.

He prayed to be dismissed, and asked for no affirmative relief.

James T. Kilbreth.

The amended bill of complaint made Kilbreth a defendant, charging (p. 120, §17,) that he held $8,000 of the certificates, which were delivered to Walter Lenox by the corporation of Washington, in payment of his services to the railroad in obtaining the city's endorsement, which $8,000 of bonds Lenox sold as his individual property, to the Ohio Life and Trust Company of New York, who assigned to Seaton and Wainwright, who sold to Kilbreth *at a price less than fifty cents on the dollar.*

The amended bill further required Kilbreth to answer special interrogatories, (p. 125,) among which was one calling on him to state from whom he received said bonds, and what he paid for the same.

Kilbreth on the 16th September, 1868, filed his answer, (p. 166,) wherein he discloses the description of the twelve bonds, or certificates that he holds, but he fails *to disclose from whom, or for what consideration* he obtained them, but sets out that he is an innocent purchaser in the open market of New York, without any knowledge beyond what appears on the face of the bonds. (It is to be noted the bonds make no reference to the deed of mortgage.) On the same day Kilbreth files what is called a petition, or cross-bill, unsworn to, in which he avers that he holds bonds as set out in his answer; that the facts of the case are apparent, and that he is entitled to have the road sold, &c.

Wherefore, by way of cross-bill, he prays that the injunction be dissolved, *and that the Trustees be required forthwith to sell said trust property, and report to this Court, &c.*

He names no defendants, and prays for no process, and none issues.

On the 14th October, 1868, on Kilbreth's *ex parte* application, and without notice, the Equity Court ordered the cause to be certified to the Court in banc for argument. Page 168

On February 6th, 1869, the Court in banc, *without notice to any one except to the Messrs. Bradleys, Trustees* on the "cross-bill" of Kilbreth *ordered the injunction to be dissolved; that the Trustees proceed to take possession of the railroad and its property, and to sell the same at public auction; and that they return*

a report of their proceedings, together with the proceeds of sale, into Court, to abide its future order; and other questions are reserved.

Page 169

Appeal Taken.

It is from order that the appeal has been taken, and the foregoing statement of facts has been made, so as to exhibit the direct points involved in the appeal.

First Point.

I. The decree should be reversed because improvidently entered.

Reserving for the future the discussion of the real questions at issue, it is respectfully submitted that the decree violates nearly all the principles of Equity practice.

The bill was filed to prohibit the Messrs. Bradleys, Trustees, who are personally subject to the jurisdiction of Court in the District of Columbia, from selling the railroad property. An injunction was issued, and the original Defendants, the Trustees and the City of Washington both answered; and they only asked the dissolution of the injunction, and a dismissal from Court. An amended bill, under an order of the Court was filed, making other and new parties, and subpœna issued against all parties, and was duly served on all except Kilbreth, a citizen of Ohio, and one other.

The City of Washington and the Trustees, Riggs and Rockover, the largest holders of the bonds, failed to answer, and therefore stand on the record in contempt.

The case standing before an Auditor on a reference made in October, 1867, (p. 165,) *and no report being in*, and a judgment, *pro confesso*, against Riggs & Co., the largest holders of the bonds, (p.139,) and Kilbreth in September, 1868, without notice to any one, files his answer and an alleged cross-bill, (p. 167,) in which he prays the dissolution of the injunction, and the affirmative relief that the Trustees enter upon possession of the road, and sell the same, and bring the proceeds into Court.

The decree can only be *prima facie* regular upon the assumption that there was a cross-bill, because it decrees affirmative relief. The subject matter of litigation was that the Plaintiffs sought to prevent the Messrs. Bradleys from selling the road upon a notice given by them extra judicially. No Court had

ordered them to sell, but in pursuance of a power in a deed they undertook to sell, and the Complainants restrained them from selling. To dissolve the injunction, and dismiss the Plaintiff's bill, was all the relief that the Defendants could have, and then they would be remitted to the same position they were before the injunction issued.

But if the Court went further than dismissing the bill, and ordered that the Trustees should sell, and bring the money into Court, then the Trustees became the officers of the Court, sold by its authority, and an affirmative relief was administered.

This could only be by a cross-bill.

2 Dan. Ch. 1647.

But a cross-bill partakes of the nature of an original bill; it must pray process, make Defendants set out cause of action.

2 Dan. Ch. 1653. Story Eq. Pl., §402, n. 1.

Here Kilbreth set out no names as Defendants, asked *no process, and no process ever issued; no one appeared, or had any notice of his alleged cross-bill,* except the Messrs. Bradleys, upon whose consent the decree was entered. Kilbreth sought to obtain a decree, the foreclosure of a mortgage, signed by the Alexandria and Washington Railroad Company, *and yet it was no party to the proceedings.*

It is confidently claimed that it is new to Courts to foreclose a mortgage against a party not before it.

If the defence that the sale by Stewart, the substituted Trustee, was null and void, then the old corporation was in existence; and if the sale were good, the new corporation should have been made a party.

New parties can not be made in a cross-bill.

Sheets *vs.* Borrow, 17 How. 145., 2 Dan. Ch. Pr., 1647.

Notice and service on solicitors of original plaintiffs, not good service of cross-bill.

2 Dan. Ch. Pr. 1653.

It is true the decree recites the cross-bill, and that counsel were heard; but the record shows that no party was before the Court except Kilbreth and the Trustees.

Even if it had been proper to order the foreclosure, yet the

Court should have ascertained the indebtedness, and ordered the sale in default of payment of a fixed sum.

Here there was a decree *pro confesso* against Riggs & Co. Was the sale to be for the bonds held by them?

Mortgage and Bonds Invalid.

II. If it be shown that the money of the bondholders actually was expended in improving the road, upon a proper bill, Equity might decree them relief, even though the mortgage and bonds be defective. It is claimed that the old corporation had no power to borrow money.

1st. Because its entire capital stock only consisted of $200,000, being represented by the 2,000 shares subscribed. If 3,000 shares had been subscribed, then its capital stock would have $300,000, but as only 2,000 shares were subscribed for, its whole capital stock amounted to $200,000. The language of the Act of Incorporation, p. 19, is peculiar, and fixes its capital at the amount of stock subscribed.

By the Code of Virginia, title 18, sec. 27, page 356, this Corporation had no power to borrow money until *all the stock subscribed for had been paid up and expended.* After this was done, then only could it borrow for the unsubscribed stock. This must be the construction, as otherwise the provision is contradictory and a construction should be given so that all parts of the statute may stand.

4 Peters, 168–171.

The provisions of the Act of Incorporation, p. 19, made the charter subject to the Virginia Code, and that granted the power to borrow only in case the capital stock was paid up and expended.

But when bonds were issued under this power it was obligatory that they should contain a provision allowing their conversion into stock. This would be notice to all the world that the bonds were issued for unpaid and unsubscribed stock.

No Power to Mortgage.

III. Conceding the power to borrow money, does that imply the power to mortgage?

The effect of a mortgage is to expose the road to a public sale, at which any one might become a purchaser.

But the 3d sec., p. 19, prohibited the Company from permitting the road to pass to any foreign Corporation ; and yet a sale under the mortgage enabled a foreign Corporation to obtain the control of it.

Mortgage and Bonds not Executed by the Old Corporation.

IV. At p. 24 is the execution of the deed. It is only signed by French as President. No reference is made to the Directors. At p. 25 is the *certificate of two Justices in the District of Columbia, that French acknowledged the deed as his individual deed.* This is admitted to be a true copy of the mortgage, p. 106, (129.)

No Attorney or Agent of the Corporation ever acknowledged the deed, and it is invalid for that reason.

But if it should be held that the acknowledgement of French may be upheld as the act of the Corporation, then it is claimed that the railroad being, in 1855, purely a Virginia Corporation, and its property lying in that State, *that it could not migrate to a foreign jurisdiction and there execute and acknowledge a deed.*

The contrary has been adjudged.

Ohio and M. R. R. Co. *vs.* Wheeler, 1 Black. 297.

It is true the contrary doctrine has been held in Vermont in Ames *vs.* Conant, 36 Vt., 747, but this decision cannot shake the unbroken current of cases in the Supreme Court referred to 1 Black.

But as no authority appears under which French acknowledged the deed, or if he had such authority he never exercised it, it is void.

And what is true in relation to the mortgage is true as to the bonds or certificates of indebtedness.

In the amended bill, p. 123, paragraph third, it is charged that the bonds were issued without the corporate seal. This is not denied by Kilbreth, and is confessed by the default of the others. At p. 22 is a copy of these bonds, which is admitted by the answer of the city, p. 106, to be a true copy, and no seal appears on the certificate.

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shown for the execution of the bond and mortgage, but it is averred, p. 123, *that no Board of Directors had ever been organized. This is not denied by Kilbreth ; and stands confessed by the default of the Defendants, who have not answered.*

The Mortgage and Bonds on their Face Ultra Vires.

V. The charter of the Old Railroad Corporation, p. 19, only authorized a road to be built to the limits of the District of Columbia. The mortgage recites, p. 22, that it is made in pursuance of the Ordinance of the City of Washington of Feb. 8, 1855. This Ordinance is found at p. 20, and recites that the money is to be used for building the road from Alexandria to the *B. and O. R. Depot* in Washington. This is near three miles within the District of Columbia, and *out of the State of Virginia.*

Now we contend that the charter of the R. R. Company did not authorize it to build a road out of the State of Virginia ; and yet the City of Washington gave its guarantee for that purpose.

It was *ultra vires* and must fall, and all parties dealing in the securities of the road must know its charter.

Pearce *vs.* R. R. Co. 21 How. 422.

2 Redfield Railway 688

Case not Ready for Action.

VI. All Equity causes must be regularly set down for hearing, but this was not done in this case ; nor could it be, because the case was out of Court before an Auditor, p. 165.

3 West Va R 668 ▽ 671

On the Merits.

VII. If the merits are considered, no such decree could be entered.

The testimony of French seems to confirm the allegation that the Board of Directors never authorized or consented to his action.

See answer 15, p. 147, answers 98, 99, p. 161, and other parts.

The deposition of Lenox is irregular in never having been taken on proper notice.

Injunction should not have been dissolved.

No party to the cause made a motion to dissolve the injunction.

Kilbreth, in his answer, neither asks *for dissolution nor for dismissal*, p. 166.

The original suit was not ready for hearing, because,

1st. *It was before an Auditor who had not reported,* p. 165.

2d. *Because there was a judgment pro confesso against Riggs & Co., who were the largest holders of the bonds, by which all the allegations of fraud contained in the Bill were confessed.*

3d. Because the Messrs. Bradley, *the Trustees,* and the City of Washington, *were in contempt* of Court in disobeying subpœna requiring them to answer amended bill.

See summons, p. 126, and service, p. 127.

Being in contempt they were incompetent to make a motion in Court.

Hence the only party who asked for a dissolution was Kilbreth, and *he did this by original bill; but his bill, naming no Defendants and praying no process, was simply nugatory and of no effect.*

There was no order setting the cause for hearing either on motion to dissolve or for final hearing.

Wilkins *vs.* Jordan, 3 W. C. C. R. 226.

The Court acted simply on motion of Kilbreth to take up his cross-bill *and the consent of the Trustees.*

The Record exhibits no other notice. The recital in the decree "*was argued by counsel,*" must have reference to Kilbreth's counsel alone, as the Trustees even did not argue that which was not opposed, but consented to.

It is declared affirmatively that the Appellants had no notice. p. 177.

If the Court should not be satisfied with the foregoing points, then we must investigate other points. The amended bill averred that neither the mortgage nor the bonds were signed by competent authority; that with the consent of the city there had been a misappropriation of the bonds and their proceeds to individual purposes; that they were held by Riggs & Co. without adequate consideration. These allegations stand confessed by the default of the City of Washington and Riggs & Co.

Hence, even admitting the validity of the mortgage and bonds, in *bona fide* hands, yet as all bonds were, on the pleadings and defaults, confessedly not held *bona fide* before dissolving the injunction, an account should have been taken or relief granted from the payment of the whole of the bonds.

If beyond the pleadings the record be carefully examined, it will disclose clearly that these bonds were not expended as required by the ordinance and mortgage for the making of the road

Estoppel on the Appellants.

It is contended that the Appellants are estopped from disputing the City of Washington debt by the rentals contained in the mortgage of the Old Corporation to Walter Lenox, to secure the $30,000 coupons, under which mortgage Steuart, substituted in place of Lenox, sold the road to the New Corporation.

This estoppel is claimed to arise from the recital, p. 36, "that the existing lien of the City of Washington for $60,000, shall retain its priority."

Estoppels to be binding must be mutually binding, and they exist only between the parties ; and *strangers cannot take advantage of them.*

The estoppel here operates between the Old Corporation and Lenox, the Trustee, and binds those claiming under him. *Only the Old Corporation* can claim the technical estoppel, and it must be plead.

2 D. & E. 171 Addison on Contracts, 938. 840
8 G. & J. 320-305

The City of Washington was not a party or privy to this deed to Lenox, and was not bound by its recitals. Suppose it had recited, that the debt was $30,000, it would not have been bound.

Hence as the City of Washington was not a party to the deed nor bound by its recitals, it cannot claim to bind the other parties, *for estoppel by deed, must be mutual.*

And so thought the solicitor for the city, for he nowhere pleads or relies on the estoppel.

It cannot be set up as an equitable estoppel, because the bonds were issued two years before the Lenox deed was executed, and hence the parties were not induced to accept the bonds by reason of the recitals.

But if there be an estoppel, upon whom does it operate?

It must be only on the Appellant who claims under the Lenox mortgage.

1st. Alexander Hay claims that he is a judgment creditor of the Old Corporation ; as such he is not bound to permit his judgment, the junior in date, to be postponed to an invalid lien. As a judgment creditor, then he does not claim under the Lenox deed, and no estoppel can operate on him.

2nd. Alexander Hay and the New Corporation created by the purchase under the Lenox mortgage as foreclosed by Steuart, the substituted Trustee, claims under the deed and is privy to its recitals; but if the City of Washington relies on the estoppels, *then it concedes the legality and regularity of the Steuart sale;* but the City of Washington, by its answer, instead of relying on the estoppel, has denied the validity of the Steuart sale. But if the New Corporation be bound, it can only be bound *quoad* the property acquired under the deed of Lenox; and that was the property authorized by the charter to be created in the State of Virginia, and *within its limits.*

3d. The Federal Corporation was created by Act of Congress, 3d March, 1863, nearly six years after the date of the Lenox mortgage.

Under the Federal Corporation, the franchise to build the bridge over the Potomac, and to operate a road within the District of Columbia, was conferred in 1863; and the bill and pleadings charge that $300,000 has been invested for this purpose.

This Corporation was essentially a different entity, endowed with different attributes and franchises than the Virginia Corporation.

Pearce *vs.* R. R. Co., 21 How. 443.
Ohio and Miss. R. R. Co. *vs.* Wheeler, 1 Black, 97.

The Old Corporation created by the Act of Virginia of 1854, p. 19, had no corporate authority to build a bridge over the Potomac and operate a road out of the limits of Virginia, *and hence the bridge and the Federal road did not and could not belong to the Old Corporation, and could not be affected by a mortgage made* nearly ten years before the creation of the Federal Corporation.

A claim is or was put forth in argument which is not made on the record by any pleading; and thus it is that the Old Corporation had in 1855 become a Federal Corporation by reason of the Act of Congress of Aug. 3, 1854.

10 U. S. S. p. 86, private acts. 810

This specifically confines the building of the bridge to the west (above) of the canal aqueduct at Georgetown, and excludes the track from passing on or over the Pennsylvania avenue. The Act of March 3, 1863, authorizes the bridge to be built on either side of the Long Bridge, and prescribing the streets, including

the crossing of Pennsylvania avenue, along which the track shall be laid, and a corporate existence is created to carry out these objects.

The Act of Congress of Aug. 3, 1854, was, as is apparent in its face, the result of an adjustment by which the Virginia Corporation was to be permitted to bridge the Potomac in Georgetown, provided the Balto. and Ohio Road would bridge the Potomac at Alexandria; and it was declared *that the Act should be void if by the 1st Jan., 1859, the Balto. and Ohio Road had not built its bridge.*

It is apparent on the record that the corporation Appellant, claiming to be the Federal Corporation, called into existence by the Act of Congress of March 3, 1863, built the bridge and road referred to in that act.

No one appears to deny this or to question its identity.

By an inadvertant omission, this Act of Congress left out the word, "Georgetown," in the Act, but that it was the intention of Congress to confer the franchise on the individuals claiming to be organized under the name of the Washington, Alexandria and Orange Railroad Company, rather than those who then were absent, as appears by the record, within the Confederate military lines, is not susceptible of a doubt.

The corporation Appellant conceiving itself described by the act, took and exercised the franchise, and was and is in its peaceable possesion and use, and no one disputes it as far as the record discloses.

If it here usurped the franchise, that is not a matter to be inquired of collaterally; and is to be settled by the inquisition of the sovereign.

The omission or transposition of a word, when the corporate name consists of several localities, is immaterial.

Chadsey *vs.* McCreery, 27 Ill. 254.
Kyd on Corporations, 237.

Misnomer of a corporation vitiates nothing; neither legislative grant, devise or contract.

Medway Cotton Company *vs.* Adams, 10 Mass. 360.
First Parish, &c. *vs.* Cole, 3 Pick. 237.
N. Y. African Society *vs.* Varick, 13 John, 38.
Chancellor of Oxford, 10 Coke, 57 (E.)
Attorney General *vs.* Rye, 7 Taunt. 550.
Ang. & Ames on Corp., sec. 234.

That the insertion of the name of the Old Corporation was a

misnomer, is proven by the declaration of Congress itself by Act of July, 1866.

14, U. S. Stat. p.

Hence the estoppel cannot operate against the Appellants.

Sale by Stewart, Substituted Trustee, a Valid Sale.

We do not think this question ought to be considered on this record; but if the Court should look into it, we submit the following views:

The substitution of Stewart, as trustee, by the County Court, was a judicial act within its jurisdiction, and cannot be assailed in this cause.

The power of a Court of Chancery to provide for the execution of a trust by the appointment of a new trustee, is one of ordinary jurisdiction.

The power is also recognized in Virginia Code, § 5, p. 735.

Reynolds *vs.* Bank, 6 Grat., 178.

But, in this case, the deed of trust at p. 35, made a specific provision for substitution, "in case of the death, incapacity, or resignation of Lenox, then the office of trustee shall be filled by an appointment to be made by any Court of Record, *on the application* of the corporation, or of the holders of three-fifths of the bonds; Provided, however, in the last case notice of the application of the parties making the request be given to the President, or one of the Directors of said Company."

This was a condition in favor of the bondholders, and was intended for their benefit, as the Company had no interest in selling itself out, but the bondholders had; for the trustee held the title for them, and this constituted their only security.

It is not provided that the notice be given previous to or after the filing of the application, nor that the notice should be for many days, nor that Lenox should receive any notice. It would certainly have been competent to have presented the application, and for the Court to have then required that so many days' notice be given; and that it be personal or by service, as provided for in sec. 1, ch. 167, of the Code; and if the Court had erred in adjudging a bad service to be legal, still it would be an error only.

The petition of Davison, p. 37, presented to the Court the following facts:

1st. The incapacity of Lenox to perform the duties of the trust created by the deed, a copy of which was annexed to his petition.

2d. The necessity of the vacancy being filled for the protection of the interest of the bondholders, all of whom he represented.

3d. The inability to find the President or any Director, or officer of the company, to whom notice of his application could be given. 9 Howe 536

All these facts were before the Court, and in appointing Stewart, the Court adjudicated each fact.

This record is legal, and shows all to have been done that was required.

It was fully within the cases quoted and the principles laid down in Voorhees *vs.* Banks, 10 Pet., 449, 472.

Harvey *vs.* Tyler, 2 Wal., 341.

Florentine *vs.* Barton, 2 Wal., 210.

Comstock *vs.* Crawford, 3 Wal., 404-5.

If a party wilfully refuse to receive notice, if he hide himself, so as to avoid it, shall a creditor with the rights of these bondholders, be delayed indefinitely in the recovery of his rights?

Nations *vs.* Johnson, 24 How. 206. 5 Cushing 303. 7 Cushing 993

We are in a Court of Equity, not in a Court of Law, which is guided by technical and precise rules. In a Court of Chancery, the pith and substance of the thing is looked at; and what ought to be done is considered as done. Certainly when the sale was advertised and was made, and possession taken under it and Acts of the Legislature, ratifying it, were passed, this was sufficient to put the Old Company on inquiry. Whatever is sufficient to put a person on inquiry is, in Equity, considered as notice.

The act of Va 1864 confirming the new company was valid - 10 Pet 596

The Guarantee of City of Washington Void.

We also maintain that the deed of trust to the Bradleys' is void, because the corporation of Washington had no power to guarantee these railroad bonds.

See Charter of Washington, 1848.

The bondholders may trace their money into the road and claim an equitable lien pro tanto.

2 Redfeild on Railways, 690-1.

There can be no estoppel when it is a question *ultra vires.*

8 G. and Johnson. 320-30)

2 Dev. & B. 171

Respectfully submitted,

ROBERT J. BRENT.

Supreme Court of the United States.

DECEMBER TERM, 1868. No. 446.

THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN RAILROAD COMPANY, AND ALEXANDER HAY, APPELLANTS,

vs.

THE MAYOR, BOARD OF ALDERMEN, AND BOARD OF COMMON COUNCIL OF THE CITY OF WASHINGTON, AND JOSEPH H. BRADLEY AND OTHERS, APPELLEES.

STATEMENT OF FACTS.

The appellants, on September 1, 1863, filed their bill in the Supreme Court of the District of Columbia, praying an injunction to restrain the defendants, Joseph H. and A. T. Bradley, from selling the Alexandria and Washington railroad under a deed of trust executed by the Alexandria and Washington Railroad Company to the defendants, Joseph H. and A. T. Bradley, to secure the payment of certain certificates of indebtedness to the amount of $60,000, issued by said Company and guaranteed by the City of Washington, some of which were then long overdue, the sale thereof having been duly advertised by the said trustees; to declare the said trust-deed null and void, and to have the same canceled. A temporary injunction was ordered.

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andria and Washington Railroad Company, the franchises, and property of this last-named Company, and after the purchase they formed this new Company according to the statutes of the State of Virginia, and under the original charter to the Alexandria and Washington Railroad Company, which was granted in 1854 by the State of Virginia; and they deny the validity of the trust-deed by that Company to the Bradleys.

For convenience, the two Companies will be designated as the OLD, and the NEW Company, respectively. The two deeds of trust respectively will be found—that to the Bradleys, on page 22, &c., and that under which the new Company claims, to Walter Lenox, on pages 25, 26, 27, and 28 of the record. The last-mentioned deed, at page 28, contains this clause:

"And it is hereby agreed that the existing lien of the City of Washington for $60,000 shall retain its priority over this deed, and be subject to any change or modification which may be agreed upon by the said city and Railroad Company, or a new lien in place of the existing one to the City of Washington, to the extent of $60,000, may be made by the said Railroad Company, which shall maintain its priority over this deed of trust made to secure $30,000 in the bonds of the Company." [This is the correct reading of the clause, in which, in the record, there are certain typographical errors.]

The new Company sets up in its bill that the old Company, having failed to pay the coupons on the bonds secured by the deed of trust to Lenox, the holders of two-thirds of said bonds, by their agent and attorney, Joseph Davison, applied to the county court of Alexandria, in the State of Virginia, the same being a court of record, to appoint a new trustee in the place of Walter Lenox named in the deed, on the ground that said Lenox had become wholly incapacitated for the exercise and performance of said trust; that for many reasons it is important to the interests and rights of the bond-holders that the vacancy created in said trust-deed by the abandonment of the same by the said Lenox should be filled as *therein provided;* that he, the agent of the bond-holders, has made diligent search and inquiry for the President or some authorized Director, or officer of said Railroad Company

to whom to give notice of this application, but can find no such person, and is informed and believes that the President and corporators of said road have abandoned the franchises of the same, and gone beyond the jurisdiction of this honorable court. This petition is sworn to and presented by Joseph Davison, who describes himself as the lawful agent and attorney in fact of all the bonds and bond-holders issued by the said Company and secured by the said deed of trust to Lenox. It was sworn to and filed on the 3*d day of February*, 1862, and was supported by the affidavit of Joseph Thornton, made on *January* 21, 1862, as to the authority of Davison. On page 79 of the record will be found the power of attorney to said Davison, executed on February 20, 1862, by Benjamin Thornton, in England, he being the person to whom the said bonds were sold by said Company, and the person under whose authority Davison claimed to act.

On the same day on which the said petition was filed the county court passed its decree, (page 33) reciting that it appearing to the court from sufficient evidence this day produced that Walter Lenox, the trustee named, &c., has become wholly incapacitated for executing the said trusts or guarding the rights therein provided and created, this court is of opinion, and so declares, that the trusteeship of said Lenox has become vacant, and on the application of Joseph Davison, attorney in fact of the holders of all the bonds in said deed of trust mentioned, the court doth appoint and substitute Joseph B. Stewart, &c.

This is the whole of the proceeding to remove Lenox and substitute Stewart in his place, and the whole of the process and evidence on which the court professed to proceed.

The deed to Lenox, page 25, describes him as "of the City of Washington." He was therefore a non-resident, and beyond the jurisdiction of the process of the court. No notice to him was published.

At page 27, record, will be found the following clause: "And it is mutually agreed that in case of the death, incapacity, or resignation of the party of the second part, or of his successors in this trust, then the office of trustee filled by

him shall become vacant, and such vacancy shall be filled by appointment to be made by any court of record in the county of Alexandria on the application of the parties of the first part, or of the holders of three-fifths of said bonds: *Provided, however*, in the last case notice of application of the parties making such request be given to the President or one of the Directors of said Company." No notice was given in any way to any officer of the Company.

On *February* 4, 1862, Stewart, the newly-appointed trustee, was required by Davison, record, page 39, to proceed and sell under his appointment.

At that time, and long before, the complainant, Hay, and Stewart, his attorney, Hay claiming to be a creditor of the old Company, had claimed to be in possession of the railroad, and had undertaken to negotiate with the corporation of Washington for its lien, and with the United States for the use of the road by them; the road had been taken into the possession of the Government in 1861, and was reconstructed at an expenditure of $85,612 72, (page 101,) and run by them, and was in their possession and control thereafter up to 1865.

Stewart, under his appointment as trustee, advertised the road for sale while it was thus held and run by the Government, and sold it on *April* 10, 1862, for $12,500 to said *Hay and his associates.* (Page 11, record.) Hay immediately organized the new Company, and reciting that he *had assigned one-half of his purchase to said Joseph Thornton*, and that *he and Thornton had paid the purchase money in the name and behalf of the new Company*, on *April* 14, 1862, had the conveyance executed by Stewart, trustee, to "the Washington, Alexandria, and Georgetown Railroad Company."

On May 3, 1862, the new Company organized, (page 49,) and it appears by its own record to have consisted of *Alexander Hay*, *Joseph Thornton*, Horace H. Day, Silas Seymour, and *Joseph B. Stewart.* What their interests were, and when the several parties became interested does not appear by any precise act, but there is evidence sufficient to show that they were the *associates for whom Hay purchased.*

The bill lays great stress on the fact, that until the said

sale by Stewart to Hay the complainants had recognised the lien of the City of Washington as a subsisting valid lien, had negotiated for a transfer of it to Hay, and only ceased their efforts when they had completed the transaction by which they supposed they had secured to Hay the title to the road.

The Court below dissolved the injunction and ordered a sale by the Bradley's, and that they should bring the money into Court. From that decree this appeal is taken.

POINTS OF LAW.

First.

The complainants have no title by which they can maintain this suit—

1. The order of the county court of February 3, 1862, was made without notice to the parties to be affected thereby, either actual by any kind of service, or constructive by advertisement, or other form known to the law, and was, therefore, not irregular nor erroneous, but null and void.

Hollingsworth *vs.* Barbour, 4 Pet., 466.
Harriss *vs.* Hardeman, 14 How., 334.
Webster *vs.* Reed, 11 How., 437.
Penobscot R. R. Co. *vs.* Weeks, 52 Maine, 457.

2. The code of Virginia (ch. 178, § 5, p. 735) expressly requires that notice shall be given.

The record shows that no notice was given. If the proceeding was under the proviso of the deed, notice was required to be given to the President or one of the Directors. To meet this they set up that neither President, Director, nor other officer could be found. In that case the code (ch. 164, § 1, p. 703) provides the mode of proceeding. It was not pursued.

3. But the deed describes Lenox as a non-resident.

The code, ch.—, §—, p.—, provides for publication in such case.

4. Again, if the proceedings were under the deed, there must have been proof of the death, incapacity, or resignation before a vacancy could be declared.

It is a special authority, giving a limited jurisdiction; every pre-requisite to the exercise of that jurisdiction must appear in the record.

It requires proceedings to bring the party into court, and the proof on which the court undertakes to adjudge a vacancy, and proceeds to fill it, should be spread on the record.

SECOND.

The whole proceeding was instituted and consummated in fraud—

1. The bill shows the active collusion between Stewart and Hay to get the title to the road, of which they falsely pretend they had the possession. The fact of any indebtedness of the old Company to Hay was directly put in issue by the pleadings, and there is not a particle of proof taken to sustain it.

2. The exhibits referred to in the statement of the facts show that Stewart and Hay failing to get the control of the road and the title to it by negotiation with the City of Washington, Joseph Thornton was induced, on January 21, 1862, to swear "that Joseph Davison is the true and lawful agent of *the bonds and bondholders*, which are now the property of Benjamin Thornton, my brother, *or his assigns;*" when in point of fact the authority to Joseph Davison was not given by Benjamin Thornton until February 20, 1862.

The petition, proof, and decree were hurried through the court on February 3, and the order to sell given on the 4th, while the road was in the possession of the Government and run and used as a military road, and after the Government

had expended in reparations and making it fit for its purposes the sum of $85,612 72; at the sale Hay bid but $12,500 for the road thus reconstructed and put in order and in use, and for the franchises of the Company; he did not pay the purchase money, but it was paid by himself and Joseph Thornton for themselves and their associates before April 14, and on that day the conveyance was made by the trustee to the new Company, of which new Company, Hay, the creditor, Davison, the pretended agent of the bondholders, Joseph Thornton, the witness on whose testimony the decree was made, and Stewart, the trustee thus appointed, were corporators.

The scheme is a transparent, fraudulent combination by parties, among whom were the trustee and the purchasers, to procure by surprise a forced sale of the road under circumstances which would prevent its bringing a fair price—a purchase by the conspirators without the payment of the purchase money, and the creation of a new corporation to demand from the Government satisfaction for the use of the road, and to defeat the honest creditors of the old corporation.

If the facts be so they may be inquired into collaterally. The proceedings were fraudulent, and by reason of the fraud no title passed to the purchaser, the complainant in the cause, or his associates. It was not only voidable, but absolutely void.

3. It was an abuse of his power, if he had any, on the part of Stewart, to sell while the road was in the possession of the United States and without getting in the legal title.

It was a Virginia corporation; the trustee was appointed by a Virginia court. He was bound by the law of that State.

There were two deeds of trust prior to the one under which he claimed, the deed to Kinzer (p.—) and the one to the Bradleys. He had nothing but an equity of redemption.

His duty was to apply to a court of equity to remove all impediments to a fair execution of his trust and every cloud upon his title, and to get up the legal title before he could sell anything but an equity of redemption; to adjust and settle the amount of debts to be paid and the order of priority of the several incumbrances, and to obtain possession of the road.

Cole's Adm. *vs.* McRae, 6 Rand, 644.
Gibson's Heirs *vs.* Jones, 5 Leigh, 370.
Rossett *vs.* Fisher and others, 11 Gratt, 492.

4. The code of Virginia, authorizing the creation of a new Company on a sale of the property and franchises of a corporation, applies only to a sale of the legal title.

Code, ch. 61, § 28, p. 356.

It cannot apply to a sale under a junior deed conveying only an equity of redemption, for the effect would be not only to extinguish the existing corporation, but to create a new one, leaving the legal title to the old one still existing and outstanding with a valid lien upon all the franchises and property in the hands of the new Company, and this *toties quoties* such sales should be made by junior mortgagees, and thus as many companies would be created as there was separate mortgages.

Finally, on this point we say the whole case is *res adjudicata*. (See the record, opinion, and judgment of the supreme court of appeals of Virginia, at —— term, 1869, in the case of the Washington, Georgetown, and Alexandria Railroad Company, against the Alexandria and Washington Railroad Company a copy of which is herewith filed.)

THIRD.

If we err in this, then we say—

1. The deed to the Bradleys is a valid trust-deed, and the contingency on which they were authorized to sell had arisen. (See pages 22, 23, 24.) Page 22 it recites the act of the cor-

poration of Washington "in relation to the Alexandria and Washington Railroad," and at page 23, "and in conformity with the provisions of the said act for securing the *payment of said certificates* and the interest thereon as the same respectively from time to time become due and payable, and for the purpose of protecting the said corporation of Washington against all default in fulfillment of said undertaking to complete and equip said road by the 1st day of December next, the parties agree to execute these presents." On the same page in the trust it provides "that in case the said parties shall fail to pay the principal of said certificates, or any part thereof, or the interest on any part of the same at any time when the same may become due and payable according to the tenor thereof when demanded, &c. the trustees shall forthwith enter upon and take possession of all of said franchises and sell," &c., &c.

The bill sets up and the fact is clearly proved that the said city was the holder of the certificates amounting to many thousand dollars, which, with the interest on them, was past due and unpaid; a demand and failure to pay and a direction by the city to the trustees to sell.

The right to borrow money, and to secure it by a trust-deed, is given in the code of Virginia. There is not a particle of proof in the cause to show that the Company did not strictly pursue the power thus given. (See Code, ch. , p. .)

2. But it does not lie with these parties to contest the validity of this deed. Unless the old Company had a valid existence, this new Company can have no existence. If it had, the validity and priority of this deed is expressly and in precise terms recognized in the one under which they claim. It is one of the conditions of this second deed. If they attempt to set up usury, they are estopped both by notice of the deed and because that defense can be made by the grantor only.

Johnson *vs.* D'Wolf, 10. Wheat.

If they seek to avoid it for want of power in either the City of Washington, or of the old Company, they are but

purchasers of an equity of redemption with full notice, and cannot dispute the validity of the prior deed so as to destroy the equity under it.

Vatier *vs.* Hinde, 7 Pet., 252.

They purchased subject to every existing equity.

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